

***United States Court of Appeals
for the Second Circuit***



**APPELLANT'S
APPENDIX**

ORIGINAL

77-1438

**United States Court of Appeals
For the Second Circuit**

UNITED STATES OF AMERICA,

Appellee,

-against-

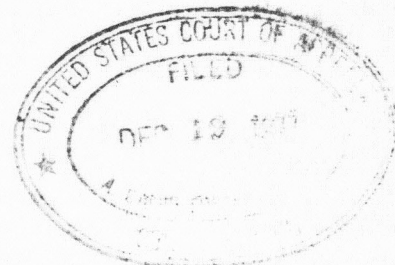
HERBERT JACOBS,

Defendant-Appellant.

*On Appeal from a Judgment of Conviction in the
Southern District of New York*

APPELLANT'S APPENDIX

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Jack Napoli	4a 53a 81a --

DOCKET ENTRIES

DOCKET ENTRIES				Case Filed Mo. Day		76 0982 03	
JUDGE/MAGISTRATE Assigned		U.S.		10 26		* 04	
0208 1 08:49		vs. JACOBS, HERBERT		No. of Dets.		76 0982 03	
Drop / Sentence		(U.S.T. FIRST MIDDLE)		JUVENILE		U.S. MAG. CASE NO.	
District Office		ORIGINAL COUNTS		1 2		U.S. MAG. CASE NO.	
U.S. TITLE/SECTION		OFFENSES CHARGED		SUPERSEDING COUNTS		RELEASE	
18:371 18:894		Consp. to commit extortion Extortion to collect debt		1 2		AMT. ☐ Fugitive Denied ☐ Set ☒ Pers. Recog.	
II. KEY DATES & INTERVALS		ARREST or		INDICTMENT ☒		ARRAIGNMENT	
U.S. Custody Began		High Risk Date		Information ☐		Trial Set for	
Summons Served		Indict. Waived ☐		1st Plea		5-31-77	
First Appearance		In Charging District		11-4-76		Trial Began	
Superseding Indict./Info ☐		Final Plea		11-4-76		Trial Ended	
Sentence		On Air Charges ☐		On Lesser Offense(s) ☐		On Government Motion ☐	
MAGISTRATE		INITIAL/NO.		OUTCOME		DISMISSED ☐	
DATE		INITIAL/NO.		HELD FOR GJ OF OTHER PROCEEDING IN THIS DISTRICT ☐		HELD FOR GJ OF OTHER PROCEEDING IN DISTRICT BELOW ☐	
Search Warrant Issued ☐ Return ☐		Preliminary Examination OR ☐ Hearing		Date Scheduled ☐ U.S. Mag. ☐		Type Number	
Summons Issued ☐ Served ☐		Arrest Warrant Issued ☐		Waived ☐ Not Waived ☐		Intervening Indictment ☐	
Complaint ☐		Offense (Indictment) ☐		Attorneys		Defense ☐ Ret. ☒ Waived ☐ Self ☐ None ☐ Other ☐ PD ☐ ID ☐	

Barbara S. Ambler
791-1154

301

1216

Case Name and Suffix Numbers of Other Defendants on Same Indictment/Information		PROCEEDINGS		EXCLUDABLE DELAY (a) (b) (c) (d)			
DATE	DOCUMENT NO.						
Buffalino-01, Sparber-02, Lapadura-04							
10-26-76		Filed Indictment & Ordered sealed. B/W Ordered...Gagliardi, J.					2-10-27-76-M-8
10-27-76		Indictment Ordered unsealed...Gagliardi, J. B/W Issued.					11-4-76
11-4-76		Deft. (atty. Harold O. Frankel by Arnold E. Wallach) pleads not guilty. Bail \$25,000 PRB continued. Case assigned to Lasker, J. for all purposes.....Cooper, J.					
12-6-76		Filed Dfts. Notice of Motion & supporting affdvt. for order to serve & file a bill of particulars. Ret. Sine Die.					
1-21-77		Filed Govts. Affdvt. in support of Govts. request for adjournment of trial.					
3/4/77		Filed Govts. Notice of Readiness on or after 5/15/77. for trial.					
5-19-77		Filed Govts. Proposed Findings of Fact & Conclusions of law.					
5-31-77		Filed Memorandum Order. Govts. motion for an adjournment has been adjourned from May 31, 1977 to Aug. 1, 1977, essential witness unavailable as indicted..... Trial will commence on 10:00 on 8-1-77 in courtroom 301.....Lasker J. (mn)					

CONT'D)

OPPOSITE THE APPLICABLE DOCKET ENTRIES SHOW, IN SECTION V, ANY OCCURRENCE OF EXCLUDABLE DELAY PER 13 USC § 3161(b)

DATE	IV. PROCEEDINGS (continued)	PAGE TWO	V. EXCLUDABLE DELAY			
			Intervenor or Party II (a)	Start Date End Date (b)	Ex Code (c)	Total Days (d)
6-13-77	Filed Opinion #46004. The motions to suppress due to the destruction of the Kel tapes are denied without prejudice to renewal at trial in the event the testimony justifies such a course. Etc. The other motions are denied.....Lasker J. (mn)					
8-1-77	Trial begun, deft. present with atty. Arnold E. Wallach & Harold O. Frankel.					
8-2-77	Trial cont'd					
8-3-77	"					
8-4-77	"					
8-5-77	"					
8-6-77	"					
8-10-77	Trial cont'd and concluded, deft. found guilty on Cts. 1&2. Deft. cont'd on bail. Sentence set for 10-7-77 at 10:a.m.Lasker, J.					
8-27-77	Redacted copy of record of proceedings, dated 4-23, 8-1, 8-2, 8-3, 8-4, 8-5, 8-8, 8-10-77					
10-10-77	Filed Notice of Appeal from judgment entered on 10-7-77. (copies issued) (copy mailed to U.S. Atty and deft's atty.)					
10-17-77	Filed Judgment and Probation # 78,187 atty. (Arnold Wallach) present. Imposition of sentence of imprisonment is suspended on counts 1 and 2 and the deft. is placed on probation for a period of THREE(3) YEARS subject to the standing probation order of this court and fined the sum of TWO THOUSAND FIVE HUNDRED DOLLARS (\$2,500.00) to be paid within NINETY (90) DAYS.....LASKER, J. ISSUED COMMITMENT 10-20-77.					

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

----- x

UNITED STATES OF AMERICA

- v -

RUSSELL BUFALINO, MICHAEL
SPARBER, HERBERT JACOBS and
JOSEPH LAPADURA, a/k/a Lefty,

Defendants.

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INDICTMENT

76 Cr. 982

COUNT ONE

The Grand Jury charges:

1. From in or about February, 1976, up to and including the date of the filing of this indictment, in the Southern District of New York, RUSSELL BUFALINO, MICHAEL SPARBER, HERBERT JACOBS and JOSEPH LAPADURA a/k/a Lefty, the defendants, unlawfully, wilfully and knowingly did combine, conspire, confederate and agree together and with each other, and with other persons whose identities are unknown to the Grand Jury, to violate Section 894 of Title 18, United States Code.

2. It was a part of said conspiracy that the defendants, RUSSELL BUFALINO, MICHAEL SPARBER, HERBERT JACOBS and JOSEPH LAPADURA a/k/a Lefty, unlawfully, wilfully and knowingly would participate in the use of extortionate means, involving the use of express and implicit threats of the use of violence and other criminal means, to cause harm to the person, reputation and property of Jack Napoli, in order to collect and attempt to collect from Jack Napoli extensions of credit, made by the defendant HERBERT JACOBS and to punish the said Jack Napoli for the non-repayment of said extensions of credit.

3. Among the means whereby the defendants and their co-conspirators would and did carry out the aforesaid conspiracy were the following:

a) The defendant, HERBERT JACOBS, having sold

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certain jewels on credit to Jack Napoli in the approximate sum of \$25,000.00, would and did agree with the defendants RUSSELL BUFALINO, MICHAEL SPARBER and JOSEPH LAPADURA a/k/a Lefty, that the defendants BUFALINO, SPARBER and LAPADURA would use physical violence and threats of physical violence to the person of Jack Napoli to collect the said \$25,000.00 on behalf of the defendant HERBERT JACOBS.

b) The defendants RUSSELL BUFALINO, MICHAEL SPARBER and JOSEPH LAPADURA a/k/a Lefty would and did communicate with Jack Napoli and would and did threaten him and others with physical harm in order to attempt to collect approximately \$25,000.00 owed by Jack Napoli to the defendant HERBERT JACOBS.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants and their co-conspirators in the Southern District of New York, committed and caused to be committed the following overt acts, among others:

1. In or about March, 1976, the defendant HERBERT JACOBS had a telephone conversation with Jack Napoli.
2. On or about March 31, 1976, the defendants MICHAEL SPARBER, HERBERT JACOBS and JOSEPH LAPADURA a/k/a Lefty met with Jack Napoli at the Vesuvio Restaurant, 163 West 48th Street, New York City, New York.
3. On or about April 5, 1976, the defendants MICHAEL SPARBER, RUSSELL BUFALINO and JOSEPH LAPADURA a/k/a Lefty met with Jack Napoli at Johnnie's Restaurant, 135 West 45th Street, New York City, New York.
4. On or about April 12, 1976, the defendant RUSSELL BUFALINO met with Jack Napoli at the Vesuvio Restaurant, 163 West 48th Street, New York City, New York.
5. On or about April 16, 1976, the defendant MICHAEL SPARBER met with Jack Napoli at the Vesuvio Restaurant, 163 West 48th Street, New York City, New York.

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6. On or about April 20, 1976, the defendant MICHAEL SPARBER met with Jack Napoli at the Vesuvio Restaurant, 163 West 48th Street, New York City, New York.

(Title 18, United States Code, Section 894)

COUNT TWO

The Grand Jury further charges:

From in or about February, 1976, up to and including on or about April 21, 1976, in the Southern District of New York, RUSSELL BUFALINO, MICHAEL SPARBER, HERBERT JACOBS and JOSEPH LAPADURA a/k/a Lefty, the defendants, unlawfully, wilfully and knowingly did use extortionate means, to wit, means involving the use and express and implicit threats of the use of violence and other criminal means to cause harm to the person, reputation and property of Jack Napoli in order to collect and attempt to collect extensions of credit from the said Jack Napoli and to punish the said Jack Napoli for the non-repayment thereof.

(Title 18, United States Code, Sections 894 and 2)

FOREMAN

Robert B. Fiske Jr.

ROBERT B. FISKE, JR.
United States Attorney

nshh 1

Napoli-direct

MS. JONES: The government calls Jack Napoli.

JACK NAPOLI, called as a witness, having been
duly sworn, testified as follows:

THE COURT: Will you keep your voice up so
all members of the jury can hear you and the people
sitting in the courtroom.

DIRECT EXAMINATION

BY MS. JONES:

Q What is your full name, sir?

A Jacomo James Napoli.

Q How old are you?

A 36.

Q Are you married?

A Yes.

Q Who is your wife?

A Jeri Napoli.

Q Do you have children?

A Yes.

Q How many?

A Four.

Q How many of them are yours?

A One.

Q Where did you grow up?

1 nshh 2 Napoli-direct

2 A Brooklyn.

3 Q How far did you go in school?

4 A I graduated high school.

5 Q Have you been in the military?

6 A Yes.

7 Q What branch?

8 A The U.S. Army.

9 Q During what period of time?

10 A 1958 to 1960.

11 Q Were you drafted or did you enlist?

12 A I enlisted.

13 Q What kind of discharge did you receive?

14 A Honorable.

15 Q Mr. Napoli, aside from the time you were in
16 military service how have you earned your living?

17 A Smuggled cigarettes from North Carolina for
18 four years, defrauded people out of money, truck driving,
19 bartender.

20 Q How many times have you defrauded people out
21 of money?

22 A Dozens.

23 Q What else have you done to earn money?

24 A That's it.

25 Q Directing your attention to 1964 did you sign

1 nshh 5 Napoli-direct

2 A Yes.

3 Q What moneys have you received?

4 A They have paid all my moving expenses, medical
5 expenses and gave me a subsistence every month.

6 THE COURT: Since when?

7 THE WITNESS: Since I started on this last year.
8 Since April 20th.

9 Q When will this relationship end?

10 A It has ended.

11 Q Mr. Napoli, as a witness in the relocation
12 program did you alter medical expense invoices which you
13 provided to the marshals?

14 A Yes.

15 Q Approximately how much money did you alter them
16 for?

17 A \$50.

18 Q Sir, do you know a man by the name of Herbert
19 Jacobs?

20 A Yes.

21 Q Do you see him in the courtroom today?

22 A Yes.

23 Q Would you point him out please. Tell me where
24 he is located.

25 A Sitting over there with the green jacket on.

1 nshh 6

Napoli-direct

2 Q I didn't hear you.

3 A Sitting over there in the green jacket.

4 Q Would you indicate really where?

5 MR. GILBRETH: We can stipulate to the identi-
6 fication. Do we need three questions to identify people
7 in court?

8 THE COURT: If you concede the identification
9 that is the end of it.

10 MR. GILBRETH: I do on behalf of Mr. Sparber.

11 MR. WALLACH: I concede with respect to Mr. Jacobs.

12 MR. DAVIS: I concede with respect to Mr.

13 Bufalino.

14 Q When did you first have any contact with Herbert
15 Jacobs?

16 A February of 1976.

17 Q Can you be any more specific as to the date?

18 A I believe it was February 12th.

19 Q Was this contact in person or over the telephone?

20 A Over the telephone.

21 Q Would you tell us what you said to Mr. Jacobs
22 and what he said to you?

23 MR. WALLACH: I object. There is no foundation.

24 THE COURT: You want to be sure the defendant knew
25 who he was talking to. Please be seated, Mr. Wallach.

1 nshh 7

Napoli-direct

2 MR. WALLACH: I have a backache.

3 THE COURT: I'm sorry.

4 Q Mr. Napoli, after the telephone call which I
5 just asked you about, did you subsequently meet personally
6 with Mr. Jacobs?

7 A Yes.

8 Q On several occasions?

9 A Yes.

10 Q Are you now able to identify the voice on the
11 telephone, on that first occasion, as the voice of Mr. Jacobs?

12 A Yes.

13 THE COURT: You may proceed.

14 Q Would you tell us what you said to Mr. Jacobs
15 and what he said to you?

16 A I told him my name was Jack Karingi.

17 THE COURT: What name?

18 THE WITNESS: Jack K-a-r-i-n-g-i and that I
19 was a friend of Russell Bufalino and that I knew him
20 and that I was talking to Russell Bufalino and I wanted
21 some jewelry. He recommended me to Herbie Jacobs.

22 Q Had you ever met Russell Bufalino when you made
23 this call to Herbert Jacobs?

24 A No.

25 Q How did it happen that you called Herbert Jacobs?

1 gwhh 1

Napoli-direct

2 to what you mean how did it happen then I can rule
3 effectively.

T2A 4 Q Mr. Napoli, had you heard of Herbert Jacobs
5 through anyone?

6 A Yes.

7 MR. WALLACH: Objection. I again object, your
8 Honor.

9 THE COURT: Overruled.

10 Q Who was that person?

11 A Larry Bufalino.

12 Q Who is Larry Bufalino?

13 A A cousin of Russell Bufalino.

14 Q Did you know Larry Bufalino?

15 A Yes.

16 Q How long had you known him?

17 A It's been about three years now.

18 Q Going back to Mr. Jacobs, did you hear back from
19 him after your first telephone conversation with him?

20 A Yes.

21 Q Do you recall when?

22 A He called me back the same day, that afternoon.

23 Q Would you tell us, sir --

24 THE COURT: As a matter of fact, Ms. Jones, I
25 remember the question it seems to me in which you asked

1 gwhh

Napoli-direct

2 Mr. Napoli what he said to Mr. Jacobs and what Mr. Jacobs
3 said to him in the first conversation, but I don't think
4 he ever told us what Mr. Jacobs said to him, if you are
5 interested.

6 MS. JONES: Thank you, your Honor, I am.

7 Q Going back to the first conversation, Mr. Napoli,
8 what did Mr. Jacobs say to you?

9 A I told him I was -- I wanted to buy a diamond
10 engagement ring and he told me that he would see what he
11 could do, that it was a holiday and it was late and he
12 would get back to me.

13 So I gave him my phone number and that's how he called
14 me back that afternoon.

15 Q Now, sir, would you tell us what he said to you
16 and what you said to him on this second conversation
17 when he called you back?

18 A He told me he was going to see what he could do.
19 Seeing it was a holiday, he would get back to me tomorrow
20 and try and get it for me.

21 Q Mr. Napoli, where were you living during this
22 period of time?

23 A 341 Kennedy Boulevard, Bayonne, New Jersey.

24 Q What happened after you had your second conversation
25 with Mr. Jacobs?

1 gwhh

Napoli-direct

66

2 A He called me back Friday morning and told me
3 that he'd have something for me and if I would go up to his
4 office Saturday.

5 Q Then what happened?

6 A I went up Saturday morning.

7 Q Where did you go?

8 A 62 West 47th Street.

9 Q In New York City?

10 A Yes.

11 Q What happened when you got there?

12 A I parked my car and I went upstairs to his office.

13 Q Was anyone with you?

14 A No, I was alone.

15 Q When you reached his office, what happened?

16 A I knocked on the door, he came to the door and
17 I introduced myself as Jack Karingi and he asked me in.

18 Q What happened next? What did you say?

19 A I told him I was Jack Karingi and he told me to
20 come in. We went into his office and he told me that he
21 only had a couple of stones that he could show me and if I
22 was interested, that's all he had. He showed me one stone
23 and I told him I would take it.

24 Q What type of stone was it?

25 A It was a 4 carat diamond. He put in a setting

1 gwhh

2 and I gave him a check for \$6,000.

3 Q What else happened?

4 A He had given me two cocktail rings at the same time.

5 THE COURT: Besides the stone that was put in
6 the setting?

7 THE WITNESS: Yes, sir.

8 Q Mr. Napoli, was this check good?

9 A No, it was not.

10 Q Did you know that at the time you gave to Herbert
11 Jacobs?

12 A Yes.

13 Q What, if anything, did you say to Mr. Jacobs
14 when you gave him the check?

15 A I told him to hold on to the check until I was
16 making sure that I was going to take the ring. I told him
17 I would call him over the weekend whether I was going
18 to take it, whether or not to deposit the check.

19 He said fine.

20 Q Then what happened, Mr. Napoli?

21 A Then I left.

22 Q What did you do after you left Herbert Jacobs'
23 office?

24 A I went down to Hester Street, a club I used to go to.
25 What time of stone was it

Q What, if anything, did you do when you got there in
it was a - great diamond. He put it in a setting

gwhh Napoli-direct

connection with the diamond rings?

A I spoke to a fellow I know that works in the diamond center on Canal Street, had him take a look at it and asked him what he thought the value was.

Q What else did you do?

A I sold one of the cocktail rings to a friend of mine

Q How much money did you receive?

A \$250.

Q What did you do after that, Mr. Napoli?

A I went back uptown to 47th Street and I sold t he diamond.

Q Who did you --

THE COURT: 4 carat diamond?

THE WITNESS: Yes.

Q Who did you sell it to?

A Sold it to Mr. Marinelli. He had a store on 24 West 47th Street.

Q How much money did you get from him?

A \$2,000.

Q Was that by check or in cash?

A It was cash.

Q What, if anything, did you do with this \$2,000?

A I went back downtown and paid a debt.

Q To whom?

gwhh

Napoli-direct

A Joe Bonamo.

Q Mr. Napoli, what did you do with the other cocktail ring?

A I held on to it.

Q After this did you have any further contact with Herbert Jacobs?

A Yes, I called him back a couple of days later and I told him to put the check in, that I was going to keep the ring.

Q Did you have any further conversation with him?

A Not until a day later.

Q The next day then, who called whom? Did you call him?

A I called him. I told him that I would be interested in taking another stone.

Q I'm sorry, I didn't hear you.

A I called him the next day and I told him I would be interested in taking another stone, if he had it.

Q What did he say?

A He said he would have something for me and to give him a call and go up there.

Q Did you meet with him after this call?

A Yes, I met him the next day.

Q Where?

1 gwhh

Napoli-direct

2 A At his office on West 47th Street.

3 Q Did anyone go with you?

4 A Yes, my wife went with me at the time.

5 Q Did she go up to the office with you?

6 A No, she didn't go upstairs.

7 Q When you got up to Mr. Jacobs' office, who was
8 there?

9 A Herbie Jacobs was there, I believe his sister
10 and some people that work for him.

11 Q What happened when you got there?

12 A I went in and he had a ring, a diamond, 3 carat
13 diamond. He wanted I believe \$7,500 for it.

14 I told him I would take it and I would let him
15 know later on during the day if I was going to keep it or not.

16 Q What did he say?

17 A Fine, call me and let me know.

18 Q Was there any other conversation?

19 A That's all.

20 Q What did you do after you left Mr. Jacobs' office?

21 A I went across the street to another jewelry store,
22 Weinstock & Yaeger, and I sold the diamond.

23 Q How much did you get for it?

24 A \$3,300.

25 Q How did you receive this money?

gwhh

Napoli-direct

A Cash.

Q What, if anything, did you do with this cash after you got it?

A I finished paying off the balance of a debt I had to Joe Bonamo.

Q After this second meeting of Herbie Jacobs, did you have any further contact with him?

A Yes, a couple of days later.

Q Was this in person or over the telephone?

A It was over the phone.

Q Did you call him or did he call you?

A He called me.

Q Would you tell us what he said and what you said, Mr. Napoli?

A He called me and told me that the check was no good and I told him I couldn't understand why, the guy gave me the check in good faith.

I told him I would reach out and talk to him and see what I could do about getting the money back to him.

THE COURT: Was the check a check that you had received that you had endorsed to Mr. Jacobs or a check you made out yourself or what?

THE WITNESS: I received the check and I gave it to Mr. Jacobs.

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gwhh

Napoli-direct

Q Did you get back to Mr. Jacobs after this phone call?

A I called him later on during the day and I told him that I would ge the \$6,000 and I would send it out to him.

Q Did you have any other conversation with him?

A Yes, I told him that my brother was looking for a ring and he would call him up, get in touch with him, and he said he would take care of him if he called.

Q What happened after that, Mr. Napoli?

A I called my brother and I told him what I was doing. I told him I need the money to finish paying off some debts that I had. If he called up Herbie Jacobs and told him what I had told him, I would go down there and get the ring.

Q After you told your brother that, did you have a meeting with your brother?

A Yes, Saturday morning.

MR. WALLACH: Objection, I move to strike out the prior testimony also.

THE COURT: He is entitled to tell what happened. He is not telling what anybody said.

Overruled.

Q What happened on that Saturday when you met your brother?

1 gwhh

Napoli-direct

2 A He picked me up at Bayonne and we went to New York.

3 Q Where did you go?

4 A West 47th Street.

5 Q What did you do when you got there?

6 A I dropped him off so he could go up to Herbie
7 Jacobs' office.

8 MR. WALLACH: Objection.

9 THE COURT: Overruled.

10 Q Mr. Napoli, what did you see your brother do?

11 A He walked into the office building where Herbie
12 Jacobs had his office.

13 Q Approximately how long was he gone?

14 A 15 minutes.

15 Q Did he return?

16 A Yes.

17 Q What, if anything, happened when he returned?

18 A He got in the car and he had a diamond ring
19 and a little brown envelope which he gave to me.

20 Q What happened to this diamond ring in the
21 envelope which your brother gave to you?

22 A I held on to it over the weekend and I sold it
23 Monday morning to Arnie Yaeger.

24 Q To whom?

25 A Arnie Yaeger.

gwhh

Napoli-direct

Q How much money did you receive?

A \$2,000.

Q What, if anything, did you do with this money?

A I took it to pay a shylock debt I had in New Jersey.

MR. WALLACE: Objection.

THE COURT: Sustained.

Give us the name of somebody or somebody you owed some money to.

THE WITNESS: I used it to pay a debt I had in Bayonne.

Q Mr. Napoli, after your brother had obtained this diamond, did you hear from Herbert Jacobs again?

A Yes, he called me up a couple of days later, the next day.

Q Would you tell us what the conversation was? What did he say and what did you say?

A He said he hadn't received the \$6,000 yet and he wanted to know when he was going to get his money.

I told him I would get it all together and straighten it out with him.

gwal

Napoli-direct

Q Was anything else said?

A He just told me that to make sure it was taken care of.

Q After this phone call, did you see Herbert Jacobs again?

A I saw him a few days later.

Q Where?

A At his office.

Q Was anyone with you, Mr. Napoli, when you arrived at his office on this occasion?

A Yes, there was three other fellows with me.

Q Who were they?

A Frankie Marmo, his partner Joey, and a fellow by the name of Chalky George.

THE COURT: What George?

THE WITNESS: Chalky.

Q Mr. Napoli, who was Frankie Marmo?

A He was a brother of Andrew Marmo.

MR. WALLACH: Objection, your Honor.

THE COURT: That's one way of describing soembody, I suppose. It doesn't enlighten me very much.

Overruled, Mr. Wallach.

Q Mr. Napoli, what was your --

THE COURT: Mr. Wallach, if you wish to make

1 gwa2

Napoli-direct

2 your objections without rising, you may because I think
3 it's more distracting for you and everybody else if you
4 have to remain standing after.

5 MR. WALLACH: Thank you, your Honor.

6 Q What was your relationship with Frankie
7 Marmo?

8 A His brother was Andrew Marmo. I owed him
9 \$4000.

10 Q All right, Mr. Napoli.

11 Mr. Napoli, had you met with Frankie Marmo,
12 Joey and Chalky George before you went to Herbert Jacobs'
13 office?

14 A Yes, they come to Bayonne to pick me up earlier
15 that day.

16 Q Did you have a conversation with them?

17 MR. WALLACH: Objection.

18 THE COURT: He can say whether he had a
19 conversation. He can say what he said, but not what
20 they said.

21 A Yes.

22 Q Now, sir, without telling us what any of those
23 individuals said to you, will you tell us what you told
24 them when you met them before you went to Herbert Jacobs'
25 office?

1 gwa3

Napoli-direct

2 A I told them that I had a fellow that I was
3 getting some diamonds out of and maybe I could probably
4 try and get one more, but I didn't know if I could be-
5 cause I owed him a lot of money at that time. But if
6 I had something to show him or something to give him,
7 maybe he would give it to me.

8 So they had cashier's -- teller's checks,
9 stolen teller's checks, and they thought they would use
10 those.

11 MR. GILBRETH: May I note my objection, your
12 Honor, to this entire background, particularly when he
13 gets into things when he said stolen teller's checks.

14 THE COURT: Sustained. I advise the
15 jury that the jury should disregard the statement by
16 the witness. He can't know that himself unless he
17 tells us he stole it.

18 I will allow the testimony that they had in
19 their possession teller's checks.

20 MR. GILBRETH: Just so the court under-
21 stands, my objection is broader. It goes to the fact
22 that I don't see the relevance of all of this background,
23 meetings with mysterious people and checks that are
24 characterized by this witness in terms we can't cross
25 examine.

GWA 4

Napoli-direct

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2 THE COURT: Then I disagree with you and
3 I overrule your objection.

4 Q Did you see the teller's checks, Mr. Napoli?

5 A Yes.

6 Q When you arrived at Mr. Jacobs' office, did
7 anyone accompany you upstairs?

8 A Yes. Chalky George went upstairs with
9 me.

10 Q When you got up to the office with Chalky
11 George, who was present?

12 A Herbie Jacobs was there and I believe his
13 son was there.

14 MR. WALLACH: A move that be stricken,
15 your Honor. "I believe his son was there."

16 THE COURT: Sustained.

17 Q Mr. Napoli, did you have a conversation when
18 you got up to the office?

19 A Yes.

20 Q Would you tell us what you said and what Mr.
21 Jacobs said?

22 A I told Herbie Jacobs that a friend of mine
23 was looking for a diamond.

24 THE COURT: Looking for what?

25 THE WITNESS: A diamond.

gwa 5 Napoli-direct

A To see if he could help him out.

Herbie Jacobs told me, "You are into me for a lot of money now and I haven't seen anything yet. I'm not going to let anything go unless I get paid."

Q I'm having trouble hearing you, Mr. Napoli. Could you speak a little louder.

THE COURT: Will the reporter read back the answer to the last question then, please?

(Answer read.)

Q Was there any other conversation, Mr. Napoli?

A Excuse me?

Q What else was said, if anything?

A He had said that if nothing was -- if he didn't get any money, he wasn't going to give anything out.

Then I told him the fellow I was with had the money to pay for the stones.

Q What happened then?

A Thne somebody had come in and handed Herbie Jacobs a packet, a couple of packets of stones.

We looked at them and he was -- Chalky George picked one out and he went to pay Herbie Jacobs with it, but Mr. Jacobs got on the phone with the bank --

Q Mr. Napoli, you said he went to pay Herbie

1 gwa6 Napoli-direct

2 Jacobs with it?

3 A Yes.

4 Q With what?

5 A It's a teller's check.

6 Q What did Mr. Jacobs do after Chalky George
7 tried to pay him with a teller's check?

8 A He went to the phone and called the bank.

9 THE COURT: He called somebody. You
10 don't know who he called, you are guessing. He got on
11 the phone, is that right?

12 THE WITNESS: He got on the phone and
13 called somebody.

14 Q Did you hear Mr. Jacobs' side of the conver-
15 sation?

16 A Yes.

17 Q What happened when Mr. Jacobs got off the
18 telephone?

19 A He told me that the checks were -- check was
20 stolen and it wasn't any good.

21 Q Did he say anything else?

22 A Yes. He was perturbed because now I owed
23 him all that money and I brought this guy up with a bad
24 check.

25 Q What did he say, Mr. Napoli?

gwa7

Napoli-direct

1
2 A He told me he wanted his money and he would --
3 he was going to call Russell Bufalino. He went to the
4 phone and made another phone call.

5 Q Did you hear his conversation, his side of the
6 conversation, when he made this phone call?

7 A He got on the phone and asked if Russell was
8 there.

9 Q Did he have any further conversation that you
10 overheard?

11 A He made another phone call and called some-
12 body else.

13 Q What did you hear Herbert Jacobs say?

14 A He asked if Russell was there.

15 Q Did you hear any further conversation?

16 A Yes. Then he made another phone call, he
17 called up a fellow by the name of John Francis.

18 Q Did you hear him ask for John Francis?

19 A Yes.

20 Q What happened then?

21 A Then he was talking to John Francis and told
22 him that I was up there and I told him that I was a
23 friend of Russell Bufalino; he had given me some
24 diamonds, and that this guy was up here now with a bad
25 check and he wanted to know what to do.

1 gwa8 Napoli-direct

2 So when he handed me the phone, I spoke to
3 John Francis and --

4 Q Mr. Napoli, without telling us what Mr.
5 Francis said to you, just tell us what you said to Mr.
6 Francis.

7 A I told him that I knew Russell Bufalino, that
8 I was a friend of his, and that my uncle was Jimmy
9 Napoli, and I told him what was happening about the
10 diamonds and what was happening right then. He had
11 told -- that's just what happened. That's all I
12 said.

13 Q What happened after you got off the telephone?

14 A I handed the phone back to Herbie Jacobs.

15 Q Did you have any further conversation with
16 Mr. Jacobs after he got off the telephone?

17 A Yes. He told me that he was going to get
18 in touch with Russell Bufalino and tell him what was
19 going on, that he wanted his money. He wanted to
20 get paid and he didn't want to know nothing.

21 Q What happened then?

22 A Then I left.

23 Q Did Chalky George leave with you?

24 A Yes.

25 Q Mr. Napoli, after this visit to Herbert

Napoli-direct

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~~_____~~ office, did you have any further contact with

A Yes. He called me later on that day at

Q What was that conversation?

A He told me that as I was leaving his office ~~_____~~ had saw me and told him that they knew me and ~~_____~~ he knew I was a friend of Russell Bufalino. If ~~_____~~ wanted the stone to come back the next day and ~~_____~~ it up.

Q Then what happened?

A I went back Saturday morning.

Q Was anyone with you?

A I was alone.

Q What happened when you went back?

A I parked in front of Herbie Jacobs' office building, there's a phone booth right there, and I called up him on the phone and told him I was downstairs, I couldn't park the car, if he would come down.

Q Then what happened?

A He came down. He gave me the stone in an old packet, I signed for it and I left.

Q Did you have any conversation with Mr. Jacobs when he handed you the stone?

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Napoli-direct

A I told him I would see him in a day or two and straighten everything out with him.

Q Was anything said about the value of the stone?

A It was \$5500, I believe.

THE COURT: Mr. Jacobs said so or what?

THE WITNESS: That's what he said, he wanted \$5500 for it, or \$6000 for it. Sorry.

Q Mr. Napoli, after this did there come a time when you had contact with Frankie Marmo again?

A Yes, Sunday morning.

THE COURT: The Sunday after you just talked about?

THE WITNESS: Yes, sir.

A He called me up and he was asking me about the money that --

MR. WALLACH: Objection.

THE COURT: Sustained. Don't tell us what he said.

A He called me up and we were just talking.

Q After this phone conversation with him, did you have a meeting with him?

A Later on that afternoon I met him in New York.

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Napoli-direct

Q What happened at this meeting?

A I gave him the stone.

Q Would you tell us what he said to you, would you tell us what you told Frankie Marmo?

A I told him -- I gave him the stone and I told him that -- to sell it, to get a buyer for it, and whaever the -- whatever he got, to give \$2000 to his brother. Anything after that, that I would split with him.

Q Did you ever see Frankie Marmo again?

A No.

Q Did you ever see that diamond again?

A No.

Q All right.

After this meeting with Frankie Marmo, did you have any further contact with Herbert Jacobs?

A Yes.

Q Do you recall when?

A Almost every day.

Q Do you recall the next time that you spoke with him?

A He called me one day.

Q Do you recall that conversation?

A Yes. He told me that Russell Bufalino had just left his office and he told me he never knew

gwal2

me, never heard of me.

MR. WALLACH: I didn't hear that, your

Honor.

THE COURT: He said he never knew him, never

heard of him.

Q What else did Mr. Jacobs tell you?

A He said he was very mad.

THE COURT: Who was that, Mr. Bufalino?

THE WITNESS: Yes, sir.

A And that if I knew what was good, I would

get this thing straightened out, I would get the
merchandise or the money back to him right away.

I asked him what else did he say?

He said if he had you here he would throw
you out the window.

Q Mr. Napoli, after this telephone conver-
sation, what was your next contact with Herbert Jacobs?

A He called me almost every day.

Q Do you recall your next conversation with
him?

A He called me the next -- he called me the
next day and told me that he wanted his money, his
merchandise. If I didn't do the right thing, I was going
to get hurt.

gwal3

Napoli-direct

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Q What, if anything else, did he say?

A I don't remember.

Q Did you have other calls from Herbert Jacobs after this?

A Yes. Every day he called me, two or three times a day sometimes.

Q Do you have any specific recollection of any of these other telephone calls, of what was said?

A He just -- every time he called, if I was there to talk to him, he just told me that he was -- it was going to be out of his hands pretty soon, he wasn't going to hold anybody off any longer and he wanted the money and he better get paid.

Q Mr. Napoli, did there come a time when you had some contact from a person who identified himself as Mike?

A He called me a few days later.

THE COURT: Who did?

THE WITNESS: This fellow who said he was Mike.

THE COURT: Do you know his full name or not?

THE WITNESS: No. He just said Mike.

Q Mr. Napoli, do you recall any conversation

1 gwal4

Napoli-direct

2 with Herbert Jacobs with respect to a Mike?

3 A Yes.

4 MR. WALLACH: Objection, your Honor. This
5 is leading. I object to the form. This is cumulative.

6 THE COURT: Overruled.

7 A Yes. Before that, when I had a conversa-
8 tion from Herbie Jacobs, he told me I would be getting
9 a phone call from a guy by the name of Mike.

10
11 (Continued on next page.)
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gwhh 2 Napoli-direct

of this meeting?

A We were talking about the \$25,000 in diamonds and how I was going to pay it.

Q Would you tell us what was said and by whom and what you said?

A Mike Sparber asked me what I intended to do about it.

I told him I was going to pay for it if I couldn't get it back from Marmo.

He says either pay it up or get the merchandise back, one or the other, but do the right thing and make sure you straighten it out. That's all that was said.

Q Did anyone else say anything?

A Eddie Sciandra had asked me what I intended to do about it. I told him the same thing I told Mike Sparber, I am going to pay it, I will get it up one way or the other. I will get up stuff to replace it.

Q Was anyone else at this meeting?

A Yes, Herbie Jacobs was there and Joseph Lapadura.

Q Did Herbert Jacobs say anything?

A No, he didn't say anything.

Q Did Joseph Lapadura say anything?

A He just told me to straighten it out, make sure I took care of it.

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2 Then he asked me how I was making out. I
3 said I was working on it and borrowing money from my
4 mother and I would have it for him by Friday. That
5 was it.

6 Q Were these telephone conversations, the last
7 two to which you testified, recorded?

8 A Yes.

9 Q Were they recorded with your consent?

10 A Yes.

11 Q How were they recorded?

12 A A tape recorder over the phone.

13 Q Who recorded them?

14 A I did.

15 Q Who provided you with the tape recorder?

16 A The FBI.

17 Q Let me show you what has been marked Govern-
18 ment's Exhibit 2, Mr. Napoli. Would you take a look
19 at that?

20 Can you identify that exhibit for us?

21 A This is the cassette that the phone conver-
22 sations were taped on.

23 MR. WALLACH: May I renew my objection
24 without belaboring the point?

25 THE COURT: Yes.

nsa6

Napoli-direct

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Q Can you identify the voices on that tape?

A Yes.

Q Whose are they?

A Myself, Mike Sparber, Herbie Jacobs and Larry
Bufalino.

Q Let me show you what has been marked as
Government's Exhibits 2B and 2C. Will you take a look
at them?

A Yes.

Q Can you identify them?

A Yes.

Q What is 2B?

A It's a transcript of a phone call between
Larry, Mike Sparber and myself.

Q What date?

A April 13th.

Q Tell us what 2C is.

A It's a phone conversation between Herbie
Jacobs and myself on April 14th.

Q Have you listened to this tape recording,
Government's Exhibit 2?

A Yes.

Q Have you compared it with transcripts 2B and
2C?

1 nsa Napoli-direct 161

2 A Yes.

3 Q Can you tell us whether the tape recording,
4 first, accurately represents the conversations that you
5 had on these two days?

6 A Yes, it does.

7 Q Do the transcripts accurately represent what
8 is on those tape recordings?

9 A Yes.

10 MS. JONES: The government would offer
11 Exhibits 2B and 2C into evidence.

12 THE COURT: Are there any objections not
13 previously made to the court? The previous rulings
14 adhere and they will be received.

15 MS. JONES: I would like to use them as
16 an aid to the jury.

17 THE COURT: Exhibit 2 is received.

18 MR. WALLACH: Do I understand that the
19 scripts are not being offered.

20 THE COURT: They are not offered in
21 evidence. That is a technicality. They can be used
22 to assist the jury.

23 (Government's Exhibits 2, 2B and 2C were
24 received in evidence.)

25 (Tape played.)

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Napoli-direct

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MS. JONES: Your Honor, I am going to ask Mr. Ginsberg now to play the second conversation.

THE COURT: Right.

MS. JONES: Ladies and gentlemen, please pass the transcripts to your left.

Your Honor, I would like to direct one or two questions to the witness while this is being done.

THE COURT: All right.

BY MS. JONES:

Q Mr. Napoli, you listened to the conversation that we just played?

A Yes.

Q In directing your attention to that portion of the conversation where you told Michael Sparber that you were going to meet a guy and get two stones, was that the truth?

A No.

Q Directing your attention to that part of the conversation where you said you were going to get money from your mother, was that the truth?

A No.

(Tape played.)

Q Mr. Napoli, after that telephone conversation with Herbert Jacobs did you have any further contact with

nshh 1 Napoli-direct

Q I show you Government Exhibits 3, 3A and 3B for identification. Would you look first at Government Exhibit 3 and tell me if you can identify it.

A This is the cassette with the phone calls on it for the 14th and 15th.

Q Have you listened to that tape recording?

A Yes.

Q Can you identify the voices on it?

A Yes.

Q Whose are they?

A Mike Sparber, myself and Herbert Jacobs.

Q Would you take a look at Exhibits 3A and 3B. Can you identify them?

A Yes.

Q What are they?

A These are the transcripts from the conversations I had with Mike Sparber and Herbie Jacobs over the tape recorder.

Q Is Government Exhibit 3, the tape recording an accurate representation of the two conversations that you had?

A Yes.

Q With Herbert Jacobs and Mike Sparber?

A Yes.

Q Have you compared it with the transcripts which

nsh 7

Napoli-direct

A Mr. Jacobs walked in and sat down at the table with Mike Sparber and the rest of the gentlemen. I told Larry that he better go talk to Herbie to straighten the matter out about the ring.

THE COURT: Who said that?

THE WITNESS: I said that.

MR. WALLACH: Objection.

THE COURT: Overruled.

Q Then what happened?

A Larry and I walked down toward the end of the bar. Mr. Herbie Jacobs come over. Larry and Herbie Jacobs were talking. As they were talking I was talking with them. Mike Sparber came over and he pulled me over to the side. He was talking to me. Then he told me that Lefty wasn't coming. He would see that the money got there. He would make sure that Mr. Bufalino knew I was paying the money.

And that it was okay for me to go. As he was walking away I said I want to talk to him once more outside.

Q Then what did you do?

A Mike Sparber and I went outside.

Q Did you talk out there?

A Yes.

Q What did you say?

41A

nshh 8

Napoli-direct

1
2 A I asked him why he set me up. Did he think I
3 was stupid. He had me hanging around there all that time
4 just so that somebody could identify me. He asked me if I
5 knew who the guy was. I said yes, I seen him.

6 Q When you said to Mike Sparber was he setting you
7 up, what were you referring to?

8 A He had somebody identify me.

9 Q When?

10 A As Herbie Jacobs and Larry Bufalino and I were
11 talking, somebody had stopped and looked at me and walked
12 away.

13 Q Who was that person?

14 A Jimmy Napoli.

15 Q When did that occur?

16 A As Larry Bufalino and Herbie Jacobs and I were
17 talking Mike had called me to the side.

18 Q Was this before you went outside?

19 A Yes.

20 Q In the Vesuvio Restaurant?

21 A Yes.

22 Q What happened?

23 A He said nobody set you up. I said don't play
24 me for stupid, I'm not. He said don't worry about it
25 there is no beef. I said there is no beef now it will

1 nshh 9

Napoli-direct

2 come later. He said there is no beef don't worry about it.
3 He said you are no relation to him, don't worry about it.
4 I said what is going to happen when I leave and go to
5 Bayonne. I didn't want them to go there. This is my
6 trouble.

7 Q Did Mike Sparber say anything else?

8 A He said there would be no problem as long as the
9 money is paid and it comes up. Nobody will get hurt.

10 Q You testified you gave Mike Sparber \$1,000, is
11 that right?

12 A Yes.

13 Q Where did you get the money?

14 A The FBI.

15 Q Was your conversation with Mike Sparber recorded?

16 A Yes.

17 Q Was it recorded with your consent?

18 A Yes.

19 Q Mr. Napoli, I show you what has been marked
20 as Government Exhibit 4 for identification. Look at it
21 and tell us if you can identify it.

22 A This is the tape from the recorder. It has my
23 initials on it.

24 Q What is on that tape?

25 A A conversation between John Francis, Larry

1 nshh 10 Napoli-direct

2 Bufalino, Mike Sparber, myself and Herbie Jacobs.

3 Q On what date?

4 A The 16th of April.

5 Q Have you listened to that tape?

6 A Yes.

7 Q Does it accurately represent the conversation
8 you had that day with Mike Sparber?

9 A Yes.

10 Q And Herbie Jacobs?

11 A Yes.

12 Q I show you what has been marked as 4A, what is that?

13 A It is a transcript from the tape recording.

14 Q Have you compared that transcript with the tape
15 recording?

16 A Yes.

17 Q Does that transcript accurately reflect portions
18 of what is on that tape recording?

19 A Yes.

20 MS. JONES: At this time the government would offer
21 Government Exhibit 4 for identification into evidence.

22 THE COURT: I assume the objections are the same
23 as the previous exhibits and the rulings are the same.

24 MR. GILBRETH: Before this transcript is displayed
25 to the jury I want to have a chance to take a look at it.

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Napoli-direct

2 here, your Honor, which you may also want to delete.

3 I think the easiest thing to do would be to ask the
4 jury to turn to the second page.

5 THE COURT: Ladies and gentlemen, please
6 turn to the second page.

7 (Tape played.)

8 MS. JONES: Please pass your transcripts
9 down to the end of the row.

10 DIRECT EXAMINATION CONTINUED

11 BY MS. JONES:

12 Q Mr. Napoli, after this meeting with Michael
13 Sparber on the 16th, did you ever have any further
14 contact with Herbert Jacobs?

15 A On the 19th.

16 Q Was this in person or did you speak to him
17 on the phone?

18 A It was on the phone.

19 Q Do you remember who called whom?

20 A I called him.

21 Q Can you tell us what this conversation was?
22 What did you say and what did Mr. Jacobs say?

23 A I was talking to Herbie Jacobs about the
24 meeting that went by on Friday. He told me that he
25 was in the dark and did not know what was going on.

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Napoli-direct

MR. WALLACH: Could I hear that again?

THE COURT: Jacobs said that he was in the dark and did not know what was going on.

A I told him, "\$25,000 you are in the dark?"

He said, "They are making all the arrangements and they will take care of everything."

Q Mr. Napoli, was that telephone conversation recorded?

A Yes.

Q With your consent?

A Yes.

Q How was it recorded?

A On a tape recorder.

Q By whom?

A Me.

Q Mr. Napoli, I want to show you what was previously marked Government's Exhibit 3 which is in evidence. I would also like to show you Government's Exhibit 3C for identification.

A Yes.

Q Have you listened to Government's Exhibit 3?

A Yes.

Q Would you identify for us what Government's

1 nsa4 Napoli-direct

2 Exhibit 3C is?

3 A It's a transcript from the cassette recording
4 between me and Herbie Jacobs.

5 THE COURT: A transcript of all or part
6 of it?

7 THE WITNESS: Part of it.

8 Q What part of that cassette does 3C repre-
9 sent?

10 A It's the phone call on April 19th.

11 Q Between whom and whom?

12 A Herbert Jacobs and myself.

13 Q Have you compared that transcript with the
14 cassette?

15 A Yes.

16 Q Is that transcript an accurate reproduction
17 of the conversation on the cassette?

18 A Yes.

19 Q Is the recording an accurate reproduction
20 of the conversation you had with Mr. Jacobs?

21 A Yes.

22 MS. JONES: At this time we will play
23 this conversation, your Honor.

24 THE COURT: I hope there are no further
25 editorial questions and, if not, the rulings are the

1 nsa Napoli-direct 200

2 A About 12 o'clock.

3 Q What happened when you got to the Vesuvio
4 Restaurant?

5 A I met with Mike Sparber.

6 Q Did you have a conversation with him?

7 A Yes. I gave him anotehr \$500.

8 Q Where were you when you had your conversation
9 with Mr. Sparber?

10 A I was standing outside with him in fr of the
11 restaurant.

12 Q In front of the Vesuvio?

13 A Yes.

14 Q What happened?

15 A I was walking in and he saw me and he came
16 outside.

17 Q What happened?

18 A I gave him the \$500. I told him I would
19 have more money for him later on that day or probably
20 by Wednesday or Thursday, I would give him another
21 \$1000.

22 Q What did Mike Sparber say?

23 A He said, "Fine, good. As long as you pay,
24 nothing will happen, nobody will get hurt."

25 I told him I would give him \$1000 a week and

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Napoli-direct

201

2 pay back \$27,000.

3 Q Where did you get the money that you paid
4 to Mr. Sparber that day?

5 A From the FBI.

6 Q Was your meeting with Mr. Sparber on April
7 20th recorded?

8 A Yes.

9 Q It was done with your consent, is that right?

10 A Yes.

11 Q I show you this marked Government's Exhibits
12 6 and 6A. Would you look at 6 and tell us if you
13 can identify it?

14 A This is the tape from the body recorder.

15 Q For what day?

16 A April 20th.

17 Q How can you identify that tape?

18 A My initials are on it.

19 Q Have you listened to it?

20 A Yes.

21 Q Does it accurately reflect the conversation
22 you had that day?

23 A Yes.

24 Q Can you identify the voices on it?

25 A Yes.

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Napoli-direct

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2

BY MS. JONES:

3

Q Mr. Napoli, after you met Michael Sparber

4

on the 20th, did you ever see him again?

5

A No.

6

Q Did you have any further contact with Russell

7

Bufalino again?

8

A No.

9

Q Did you have any further contact with Herbert

10

Jacobs?

11

A Yes.

12

Q Do you recall approximately when this was?

13

A May 10th.

14

MR. WALLACH: Objection.

15

THE COURT: Overruled.

16

Q Was this contact personally or over the

17

phone?

18

A On the phone.

19

Q Who called whom?

20

A I called him.

21

MR. WALLACH: May I ask your Honor to

22

give me the reasons?

23

THE COURT: You objected and I overruled

24

it. This is within the indictment dates. The overt

25

acts don't control.

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Napoli-direct

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MR. WALLACH: I will give you authority,
if you wish.

THE COURT: I am sorry. You are too
late, Mr. Wallach.

BY MS. JONES:

Q Mr. Napoli, your telephone conversation with
Mr. Jacobs, what did you say and what did he say?

A He asked me what I was doing. He thought
I was taking a vacation as I had left. He was curious
where I was. I said I was away and out trying to get
the money. He asked me if I had spoke to Russell
Bufalino or Mike Sparber and I said no. He told me
that he had expected Russell Bufalino in the next day;
I should give him a call at the Vesuvio Restaurant.

I asked him, "What's doing? Are they
mad?"

He said, "They are a little mad because you
did not stick to your agreement."

He asked if I had any money to send and
I said no. He said if I stuck to my original agreement
of \$1000 a week everything would be okay. He asked
me if I had talked to my wife's mother recently. I
said yes. He had spoken to her Friday.

THE COURT He told you he had spoken to

1 nsa3 Napoli-direct 205

2 her?

3 THE WITNESS: Yes. He had spoken to
4 her Friday.

5 A He told me to give her a call because she
6 was worried about the daughter and the kids.

7 I said, "Sure, because she hears that they
8 will kill me, and sure she's worried."

9 He said, "Nobody is going to kill you. As
10 long as everything gets straightened out, nobody will
11 kill you." He said I could have gone to the law
12 from the beginning but I didn't go. He said, "No-
13 body will hurt you as long as the money is paid. Nothing
14 will happen to anybody."

15 Q Was this conversation recorded?

16 A Yes.

17 Q How was it recorded?

18 A On a tape recorder.

19 Q By yourself?

20 A No. By Steve Edwards.

21 Q Who is Steve Edwards?

22 A An FBI agent.

23 Q Was it done with your consent?

24 A Yes.

25 Q I show you what have been marked as Government's

nsa4

Napoli-direct

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Exhibits 7 and 7A. Take a look at 7 first and tell me if you can identify it.

A This is the cassette from the recording. It has my initials on it.

Q What is on that cassette?

A It's a conversation between Herbie Jacobs and myself.

Q On what date?

A May 10th.

Q Have you listened to that cassette?

A Yes.

Q Does it accurately reflect the conversation you had with Mr. Jacobs that day?

A It's a transcript from the tape recording.

Q Is 7A an accurate reproduction of the conversation on Exhibit 7?

A Yes.

MS. JONES: At this time the government would offer Government's Exhibit 7 for identification into evidence.

THE COURT: Assuming the same objections as the past, Exhibit 7 is received in evidence.

(Government's Exhibit 7 was received in evidence.)

XX

1 nshh 2

Napoli-cross

2 along as I hope we will, it sounds like a number of
3 documents you have, I am hoping that although we may go
4 into next week we can arrange so we don't have to work
5 Saturday. Let's see if we can keep moving along.

6 (Open court)

7 THE COURT: Would you call the witness, please.

8
9 J A C K N A P O L I, resumed.

10 CROSS-EXAMINATION

11 BY MR. WALLACH:

12 Q Mr. Napoli, I represent Mr. Herbert Jacobs.

13 You started testifying Monday. You took an oath, didn't you?

14 A Yes.

15 Q Explain the nature of what the oath means to you.

16 MS. JONES: Objection, your Honor.

17 THE COURT: I will sustain the objection on that
18 basis. You can ask specific questions.

19 Q Did you understand the nature of the oath?

20 A Yes.

21 Q Would you tell us what you understood?

22 A To tell the truth.

23 Q That is what the oath meant to you?

24 A Yes.

25 Q If you are not under oath you don't tell the truth.

nshh 3 Napoli-cross

MS. JONES: Objection.

THE COURT: Sustained.

Q Was that your understanding of the oath when you testified before the grand jury?

THE COURT: That is that he was to tell the truth?

MR. WALLACH: Yes.

A Yes.

Q Was it your understanding when you are asked a question and give an answer under oath you tell the whole truth?

A Yes.

Q Do you recall being asked about the check you gave to Mr. Jacobs, the first check?

THE COURT: Would you refer to what testimony you are talking about, direct testimony in the trial or what?

MR. WALLACH: I am reading from page 71.

MS. JONES: I object without some foundation.

THE COURT: Of the transcript.

MR. WALLACH: Of the transcript of his trial of the testimony.

THE COURT: First ask him if he remembers at the trial being questioned about certain things.

Q Do you remember being questioned on August 2, 1977,

nshh 4 Napoli-cross

in this courtroom?

A About what?

THE COURT: Your original error was not telling the witness or the rest of us what question you were talking about. Ask him if he remembers being questioned about a certain subject two days ago.

Q Do you recall being questioned about whether you endorsed a check you gave to Mr. Jacobs?

A Yes.

Q Do you recall being asked this question on page 71:

"Q Was the check you had received that you endorsed to Mr. Jacobs a check you made out yourself or what?"

Do you recall being asked that question?

A Yes.

Q Do you recall who asked you that question?

A No, I don't.

Q If I tell you the court, would that help your recollection?

THE COURT: I will sustain the objection to the relevance of it, who asked.

Q Do you recall giving this answer:

"A I received the check and gave it to Mr. Jacobs."

A Yes.

nshh 5 Napoli-cross

Q Did you endorse the check?

A I don't remember if I signed the check or not.
I didn't make it out.

Q You were asked just two days ago whether you endorsed the check. Did you tell the court and the jury you didn't remember?

A I don't remember.

Q That is not the question, sir. Did you say that to the court two days ago or three days ago?

THE COURT: Did he say what to the court?

MR. WALLACH: That he couldn't remember whether he endorsed the check or not.

A Yes.

Q You did tell that to us?

A If it is in the transcript I said it.

Q That is the point. It is not.

MS. JONES: Objection.

THE COURT: Sustained.

Q Three days ago when you were asked that question was it your state of mind to conceal that you did or did not endorse the check?

A No.

Q You just didn't remember?

A Yes.

1 nshh 6

Napoli-cross

2 Q Sir, your first name was Giacomo, that wasn't
3 assumed, was it?

4 A No.

5 Q The name Jack is a derivative of Giacomo,
6 isn't it?

7 A Yes.

8 Q What name did you use when you introduced
9 yourself to Mr. Jacobs?

10 A Jack Caringi.

11 Q Was Caringi a name you made up or did you know
12 someone by that name?

13 A I knew somebody by that name.

14 Q Who was that person?

15 A It is my mother's maiden name.

16 Q Did you tell that to Ms. Jones when you were
17 telling her of all these transactions?

18 MS. JONES: Objection as to relevance.

19 THE COURT: That is his mother's maiden name?

20 MR. WALLACH: Yes.

21 THE COURT: Sustained.

22 Q Did you ever tell that to any of the agents?

23 MS. JONES: Same objection, your Honor.

24 THE COURT: Sustained.

25 Q Did you ask your mother whether you could use

1 jbhh 2 Napoli-cross

2 He said he answered it.

3 MS. JONES: I object, your Honor.

4 Q Tell us when you first called Mr. Jacobs.

5 A February 12th.

6 Q Do you know what day of the week it was?

7 A Thursday.

8 Q A holiday?

9 A It was a holiday week.

10 Q Now, were you in touch with the Federal Bureau
11 of Investigation in January of 1976?

12 A Yes.

13 Q What agent?

14 A I think his name was Harrington.

15 Q Were you sent for by him?

16 A He came to my house.

17 Q Was he investigating something?

18 MS. JONES: Objection. How can he answer that?

19 THE COURT: Sustained.

20 Q Do you know the reason he came to your house?

21 A No.

22 Q Did you invite him to your house?

23 A No.

24 Q Just came?

25 A Yes.

1 jbh 3 Napoli-cross

2 Q Did you speak to him?

3 A Yes.

4 Q What did you speak to him about?

5 MS. JONES: Objection, your Honor. Relevance.

6 MR. WALLACH: It is cross-examination.

7 THE COURT: Sustained unless -- I will allow
8 some questions to see if it can be connected.

9 THE WITNESS: It's got nothing to do with this.

10 THE COURT: What was the general subject matter?
11 Don't name any names.

12 THE WITNESS: Just talking about certain people.
13 None of these gentlemen here.

14 Q Were you talking about certain crimes?

15 MS. JONES: Objection, your Honor. Relevance.

16 THE COURT: Sustained.

17 Q Was he asking you to give them information?

18 A No.

19 Q Did he tell you you were a target?

20 THE COURT: Do you know what the expression
21 means when lawyers use it?

22 THE WITNESS: No, I don't.

23 THE COURT: It means that you were being
24 investigated and might be indicted.

25 THE WITNESS: No.

1 jbh 4 Napoli-cross

2 Q Was he asking you to cooperate in an investigation?

3 A No.

4 Q How long were you with him?

5 MS. JONES: Your Honor, I object.

6 THE COURT: Sustained.

7 Q Did he give you a telephone number where you
8 could call him?

9 MS. JONES: I object.

10 THE COURT: Overruled.

11 A He left me his card.

12 Q What did he tell you when he left you his card?
13 To call him?

14 A Yes. If I wanted to speak to him, to call him.

15 Q To speak to him about anything?

16 A Yes.

17 Q Were you invited to cooperate at that time?

18 A Yes.

19 Q When you called Mr. Jacobs on February 12th, you
20 never saw him before that, did you?

21 A No.

22 Q You were never introduced to him, were you?

23 A No.

24 Q Prior to February 12th, you were discussing
25 him with one Larry Bufalino?

1 jbh 5

Napoli-cross

2 A Yes.

3 Q And you were discussing getting jewelry from
4 him at that time?

5 A Yes.

6 Q But that plan was abandoned, correct?

7 A Yes.

8 Q At the time you discussed it with Mr. Larry
9 Bufalino, you had no intention of paying for it, did you?

10 A No.

11 Q Then in February you decided you would do it
12 alone.

13 A Yes.

14 Q When did you first see Mr. Jacobs? February 13th?

15 A 14th, Saturday.

16 Q Saturday. And did you bring a check down?

17 A Excuse me? //

18 Q Did you bring a check down?

19 A Yes.

20 Q Would you describe the check?

21 A It was a check drawn on a business.

22 Q What business?

23 A My brother's business.

24 Q What was the name of the business?

25 A Napoli Bros.

62A

1 jbhh 6

Napoli-cross

2 Q And to whom was the check made out?

3 A It was made out to Jack Caringi.

4 Q Who was it signed by?

5 A My brother.

6 Q Your brother signed it?

7 A Yes.

8 Q Did you tell him what you wanted to do with
9 that check?

10 A Yes.

11 Q What did you tell him?

12 A I told him I was going to go buy some jewelry
13 with it.

14 Q That wasn't true, was it?

15 A No, it wasn't.

16 Q And in what amount was the check?

17 A \$6,000.

18 Q Did you and Mr. Jacobs over the phone discuss
19 the price?

20 A No.

21 Q How did you know to bring a check for \$6,000?

22 A I didn't.

23 Q You didn't even know what you were going to buy,
24 did you?

25 A No.

1 jbhh 7 Napoli-cross

2 Q You didn't know whether what you bought was
3 worth a thousand dollars at the time you made the check out?

4 A No. I didn't make the check out.

5 Q Sorry.

6 At the time your brother made the check out.

7 A That's right.

8 Q Anything else on the check?

9 THE COURT: What do you mean?

10 Q Any endorsements, any writings, anything,
11 besides the name of the bank?

12 A My brother's signature.

13 Q That's all?

14 A That's all I remember.

15 Q Nothing endorsed on it, for jewelry?

16 A I don't remember.

17 Q Well, your brother took it out of a checkbook.

18 You saw that, didn't you?

19 A Yes.

20 Q Did he endorse anything on the stub?

21 A I don't remember.

22 Q You don't remember because you didn't even
23 care, right?

24 A No.

25 Q Did you know the check wouldn't be honored?

1 jbh 8 Napoli-cross

2 A Yes.

3 Q That's why you didn't care, correct?

4 A Yes.

5 Q Did your brother know it wouldn't be honored?

6 A Yes.

7 Q As a matter of fact, the business was defunct,
8 wasn't it?

9 A Yes.

10 Q Well, did your brother say what are you going
11 to pass a check that I signed if it wouldn't be honored?

12 THE COURT: Would you repeat that, Mr. Reporter,
13 please.

14 (Record read)

15 THE COURT: Do you understand the question?

16 THE WITNESS: Yes.

17 THE COURT: Answer it please.

18 Q Did he say that?

19 A No.

20 Q Did he question the amount?

21 A No.

22 Q Was your brother colluding with you to defraud
23 Mr. Jacobs?

24 MS. JONES: Objection.

25 THE COURT: Sustained.

1 jbh 9

Napoli-cross

2 Q Did you enlist your brother to cheat Mr. Jacobs?

3 THE COURT: Sustained.

4 Q Did your brother get any of the proceeds?

5 A Which time?

6 Q I'm sorry. I didn't hear that.

7 A Which occasion?

8 Q At any time.

9 A Once.

10 Q How much?

11 A \$200.

12 Q That was for giving you the check?

13 A No.

14 Q Now, when you went to see Mr. Jacobs on

15 Saturday, you went to his office, didn't you?

16 A Yes.

17 Q Can you describe it?

18 A It is on the 14th floor of 62 West 47th Street.

19 Q How many rooms?

20 A Three.

21 Q Do you know the yardage?

22 A No.

23 Q It wasn't as big as this courtroom, was it?

24 A No.

25 Q He presented you with certain jewelry?

jbhh 10

Napoli-cross

A Yes.

Q Did he tell you the price?

A Yes.

Q What was the price?

THE COURT: Of what?

Q Of the jewelry that you purchased.

A Which one?

Q I will withdraw the question.

Did he show you certain jewelry?

A Yes.

Q Did you purchase any of that jewelry that Saturday?

A Yes.

Q Tell us the price.

THE COURT: The total price? He bought more than one item.

MR. WALLACH: Yes.

A I don't know the total price. I don't remember.

Q You gave him a check, didn't you?

A For one piece, yes.

Q How much?

A \$6,000.

Q Did he tell you the price of that would be \$6,000?

A Yes.

THE COURT: That's the big ring?

1 jbh 11

Napoli-cross

2 THE WITNESS: Yes.

3 Q Did you bargain with him and say it is too much?

4 A No.

5 Q That's because you knew he wouldn't be paid
6 anyway, isn't that correct?

7 THE COURT: You have made that point pretty
8 clear in the past, Mr. Wallach. We don't need it every time.

9 Don't answer it.

10 Q And the price was \$6,000 even for that?

11 A I answered that already.

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Napoli-cross

450

Q I don't remember the answer.

THE COURT: Well, you should remember the answer. He just said it a minute ago

Q Did you get anything else besides the other item of jewelry that day?

A Yes. Two cocktail rings.

Q Besides that?

A Jewelry?

Q Isn't it a fact that he gave you \$200 cash?

A Yes.

Q That's because the item that you allegedly paid for was \$5800, is that correct?

A No. It's not correct.

Q Well, you just asked him for \$200.

A He gave me \$200 for a television set.

Q He bought a television set from you?

A Yes.

Q Did you ever deliver that?

A No.

Q Did you tell that to the government attorney?

A I don't remember if I did.

Q Well, you were asked to tell everything about this case, weren't you?

A Yes.

1 jba

Napoli-cross

2 Q There came a time when you went up with some
3 gentlemen and one of them was named Chalky George?

4 A Yes.

5 Q You arranged with Chalky George and two
6 other gentlemen to go to Mr. Jacobs' place, correct?

7 A Yes.

8 Q Did you know at that time that Chalky George
9 had stolen checks?

10 A Yes.

11 Q Why did you bring him up?

12 A He came with one of the other guys.

13 Q Why did the other guy come too?

14 A Because I owed the other fellow's brother money.

15 THE COURT: Marmo?

16 THE WITNESS: Yes, sir.

17 Q Were they armed?

18 A I don't know.

19 Q Were you armed?

20 A No.

21 Q Did you know whether it was a custom and
22 usage for Chalky George to carry a gun or an arm?

23 A I don't know.

24 Q I adverted to the first check. You gave
25 it to him on a Saturday, correct?

jba

Napoli-cross

A Yes.

Q Do you recall what bank it was drawn on?

A No, I don't.

Q Do you know whether it was a New York City

bank?

A No. It was a bank in Long Island.

Q Would it be Port Washington?

A Yes.

Q That's where the store was, correct?

A Yes.

Q The store at that time was not in business?

THE COURT: Is that a question?

MR. WALLACH: Yes, sir.

Q Was it?

A I don't know. I don't remember if it was

or wasn't at that time.

Q When you say now you don't remember are you

trying to evade giving answers?

MS. JONES: Objection.

THE COURT: Sustained.

Q Did you know whether any banks were open on

Saturday where that check could be deposited?

A No, I don't know.

Q So that when you testified that you told Mr.

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Napoli-cross

453

Jacobs to hold the check he had to hold it anyway,
didn't he? Didn't he?

A I imagine so.

Q You don't know whether any banks were open
on the following day, a Sunday, do you?

A Doesn't have to be open to make a deposit.

Q Are you acquainted with banking practices,
sir?

MS. JONES: Objection, your Honor.

THE COURT: Overruled.

Q Are you acquainted with banking customs?

A Some.

Q Well, if he deposited it on a Sunday it
still wouldn't go through until the next business day,
right?

A Yes.

Q As a matter of fact, you never told that to
Mr. Jacobs.

A Never told him what?

MS. JONES: Never told him what?

MR. WALLACH: Your Honor, I am trying to -- I
assume that the preceding questions were recalled by the
witness and Miss Jones. I'll repeat everything I
have to say, if I have to.

jba

Napoli-cross

THE COURT: No. You don't have to. You just said you never told Mr. Jacobs that.

Q You never told Mr. Jacobs to hold the check, did you?

A Yes, I did.

Q Not to put it through on a Saturday, please; did you tell him that? "Please don't put this check through on Saturday, today"; did you tell him that?

A No.

Q Did you say, "Please don't put that check through on Sunday"?

A No.

Q I again ask you, if it weren't endorsed by you, it couldn't be put through.

THE COURT: Is that a question?

MR. WALLACE: Yes.

THE COURT: Do you understand that?

THE WITNESS: No, I don't.

Q Well, you have dealt with checks before that, haven't you?

A Yes.

Q People have given you checks.

A Yes.

1 jba

Napoli-cross

455

2 Q And you have given checks out, haven't you?

3 A Yes.

4 Q Checks that cleared, correct?

5 A Yes.

6 Q Were they endorsed?

7 A Yes.

8 Q You wouldn't take a check made out to somebody
9 else and given to you unless that somebody endorsed the
10 check, would you have?

11 MS. JONES: Your Honor, I object. This
12 is so --

13 THE COURT: Overruled.

14 A No.

15 Q But you don't remember whether you endorsed
16 this check or not?

17 A No, I don't.

18 Q Did you the day you gave him the check, or any
19 time before that, plan not to endorse that check?

20 A No.

21 Q Wasn't it your state of mind when you allegedly
22 gave him that check you never wanted that check to be
23 honored or to be put through?

24 A No.

25 Q Isn't it a fact you didn't endorse the check

jba

Napoli-cross

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A Yes.

Q You never gave that unlisted number to Mr. Jacobs, did you?

A I didn't have a phone at that time with Mr. Jacobs.

Q When did you get the unlisted number?

A Before that happened.

Q Excuse me. Maybe I am confused.

At the time you went to Mr. Jacobs on a Saturday, did you have an unlisted phone in your name?

A No.

Q When did you get the unlisted phone?

A Couple of months before that.

Q A couple of months before you saw him?

A Yes. The phone was disconnected at that time.

Q Not paying for the bill, I assume.

A Yes.

Q How much did you owe?

MS. JONES: I object, your Honor.

THE COURT: Sustained.

Q Did you tell, what was your mother-in-law's name, if I may?

A Kamienski.

jba

Napoli-cross

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Q Did you tell Mrs. Kamienski that you would be getting phone calls on that telephone?

A What telephone are you referring to?

Q The one in her apartment, the number that you gave Mr. Jacobs.

A Yes. I told her.

Q Did she take messages for you?

A Yes.

Q Did you tell her any time that Mr. Jacobs would call?

A Yes.

Q Did you tell her to take down Mr. Jacobs' message if you weren't there and couldn't take the call?

A Yes.

Q Did you tell her what you were involved with?

A No.

MS. JONES: I object. I don't see the relevance to anything.

THE COURT: Sustained.

Q When did you move out of that house?

A When I was relocated.

Q Last year, in May, April, 1976, around then?

jba

Napoli-cross

459

A April.

Q So up until the time you were relocated Mr. Jacobs knew where to call you in Bayonne, am I correct?

A Yes.

Q You testified the other day that you were frightened.

A Yes.

Q You were frightened during this period of time, weren't you?

A Yes.

Q Did you ever tell your mother-in-law, "Discontinue that number"?

MS. JONES: Objection, your Honor.

THE COURT: Overruled.

A No.

Q Now, the meetings that you testified to, all during this period of time from February to April where you went to a bar known as the Vesuvius or Vesuvio --

THE COURT: Are you asking whether he went there?

MR. WALLACH: Yes.

A Yes.

1 nsa4

Napoli-cross

2 Q Yo idn't drink \$60 worth of Scotch, did
3 you?

4 A No.

5 Q There were other people there?

6 A Yes.

7 Q Did you have one Scotch?

8 A No.

9 Q Two Scotches?

10 A No.

11 Q Tell us, if you can, how many you had.

12 A I didn't count them.

13 Q You drank and just didn't count?

14 A No, I didn't.

15 Q How about the Vesuvio, you had a drink there?

16 A Yes.

17 MS. JONES: When?

18 Q At each and every time at the Vesuvio.

19 THE COURT: I will sustain the objection.

20 MR. WALLACH: I will go to something else.

21 If I could have one on the house at the Vesuvio I'll
22 stop.

23 Q Before we go there, getting back to this store
24 in Port Washington, what was the name, Pork Store?

25 A Yes.

Q The check you gave Mr. Jacobs wasn't kosher?

THE COURT: Oh, beautiful, Mr. Wallach.

MS. JONES: At any rate, I object.

Q Let's go to the Vesuvio.

The first time you were there how many hours,
if any, did you spend?

A Six or seven hours.

Q At the bar?

A Not all at the bar, no.

Q Of the six or seven hours was the majority
of time spent at the bar?

A I guess so, yes.

Q Were you drinking?

A Yes.

Q You didn't count how many you had?

A No.

Q You paid for them, didn't you?

A I don't know if I paid or Larry Bufalino
paid.

Q It didn't matter, did it?

MS. JONES: Objection.

THE COURT: Sustained.

Q The second time you were at the Vesuvio were
you at the bar?

1 nshh 5

Napoli-cross

2 MS. JONES: I object. There has been no foundation.

3 THE COURT: It has to do with the question he
4 just asked. Can I have a copy of the grand jury testimony
5 so I can rule?

6 MR. WALLACH: It is marked off in red.

7 THE COURT: You are planning to start on line 20?

8 MR. WALLACH: Yes.

9 THE COURT: I don't see it is permissible. The
10 material here is not inconsistent with what the witness
11 just said.

12 MR. WALLACH: I would like to ask another
13 question.

14 THE COURT: Where?

15 MR. WALLACH: Not from here.

16 THE COURT: All right.

17 Q Did you ever call the District Attorney about
18 this case?

19 MS. JONES: Objection. Asked and answered.

20 THE COURT: Besides calling Sergeant Nicholson.

21 MR. WALLACH: That's right.

22 A No.

23 MR. WALLACH: May I read from line 20 to 24?

24 THE COURT: All right.

25 Q "Q How did the FBI get involved in this case?"

nshh 6

Napoli-cross

Do you recall being asked this question?

A No.

Q "A I saw I couldn't get out of it. I couldn't pay this off. First I called the District Attorney and they more or less didn't want to have anything to do with it. Then I got in touch with the FBI."

Do you recall it now?

A Yes. I didn't mean the District Attorney himself.

THE COURT: You have brought it out.

Q Could you describe initially the rings that you got from Mr. Jacobs or the jewelry that you got from Mr. Jacobs on Saturday, the first Saturday?

A One was a 4 carat diamond engagement ring and two ladies' cocktail rings.

Q Did you dispose of those things?

A Yes. I sold one and pawned the other.

Q Thereafter you got other jewelry from Mr. Jacobs?

A Yes.

Q Did you ever see any of the jewelry after you disposed of it?

A No, I didn't.

MR. WALLACH: May I just speak to my client a minute, your Honor?

THE COURT: Certainly.

1 nsa Napoli-redirect 501
 2 or April 12th meeting, I don't remember when. It was
 3 after the April 5th meeting that I gave it to him.

4 Q What was your purpose to give it to him?

5 A To stall for time.

6 Q Were you stalling for time?

7 A I was trying to find out what I was going
 8 to do. I was going to get this money together.

9 Q Directing your attention to the occasion
 10 that you testified that you saw Herbert Jacobs and
 11 Mike Sparber at your home, do you recall that?

12 A Yes.

13 Q Were you at your home when they arrived?

14 A No, I wasn't.

15 Q Where were you?

16 A I wasn't home. I was away. I was fur-
 17 ther uptown somewhere.

18 THE COURT: You were what?

19 THE WITNESS: I wasn't near the house. I
 20 don't know where I was.

21 Q Where were you when you saw Mr. Sparber
 22 and Mr. Jacobs at your house?

23 A I was in the car.

24 Q You were not in the house, is that right?

25 A No. I was in the car.

1 bma

2 jury.

3 We will excuse the witness.

4 MS. JONES: Thank you, your Honor.

5 (Witness excused.)

6 MR. DAVIS: If your Honor please, may I
7 have one minute.

8 THE COURT: Sure.

9 MS. JONES: Your Honor, at this time the
10 government rests.

11 THE COURT: Ladies and gentlemen, the govern-
12 ment has just announced it has rested, which means it
13 has finished its evidence in chief. At this time I
14 have certain matters to discuss with counsel. You may
15 retire to the jury room.

16 (The jury left the courtroom.)

17 THE COURT: Mr. Davis, may I have your
18 attention. Do you wish to make a motion at this time?

19 MR. DAVIS: I move to dismiss on the grounds
20 the government has failed to make out a prima facie case.

21 MR. WALLACH: I move for a judgment of acquittal
22 I would submit to your Honor that the government's evi-
23 dence should not be submitted to the jury in regards to
24 Mr. Jacobs. I don't think that reasonable people
25 can differ on Mr. Jacobs.

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2 I think that Mr. Napoli -- and I am only
3 talking about my client -- is inherently incredible.
4 With regard to Mr. Jacobs, I don't think the government
5 made out a case of any extortionate credit or any
6 extortion on the part of Mr. Jacobs.

7 Recognizing Rule 2 and the rules of conspiracy,
8 I say despite that factor I think that one has to assess
9 Mr. Jacobs' role in acting as an individual, whether he
10 entered an arrangement or colluded with an illegal
11 purpose in mind. I think the evidence is ambiguous
12 and consistent with innocence. I believe it is the
13 U.S. v. Robinson and they considered evidence which was
14 ambiguous.

15 I would submit to your Honor that it should
16 not be submitted to the jury. I don't think reason-
17 able minds can differ in regard to guilt or innocence.
18 I think on no view of the facts is Mr. Jacobs liable
19 under both counts.

20 THE COURT: The motion is denied because
21 of my view that if Mr. Napoli believed, which is of course
22 up to the jury, a reasonable juror could believe that
23 Mr. Jacobs conspired with his co-defendants and carried
24 out the acts stated in the indictment.

25 MR. WALLACH: I believe I stated the

1 bmhh 5

2 the bench about a matter that was raised yesterday.

3 (In the robing room)

4 MR. GILBRETH: Your Honor, would you please leave
5 your law clerk out so that we can have some more independent
6 word as to whether the jury is discussing this case or
7 not discussing it? I am talking about my information.

8 THE COURT: What?

9 MR. GILBRETH: May we have your court clerk
10 stay outside for the purpose of observing whether the
11 jury is discussing the case.

12 THE COURT: All right.

13 MR. WALLACH: Your Honor, yesterday we presented
14 to you for your consideration and also to Ms. Jones a record
15 made by a public agency, the Police Department of the City
16 of New York, which was certified. Ms. Jones is not
17 questioning the certification but the substance of it
18 which would show that Mr. Jacobs went to the Police
19 Department and complained about Caringi.

20 THE COURT: I thought it was the relevance?

21 MS. JONES: We still object to the relevance
22 but not the authenticity.

23 THE COURT: What is your question?

24 MR. WALLACH: I would like to present some
25 evidence as part of the defendants' case to show you in a

1 bmhh 6

2 case where criminal means were used to collect the debt,
3 and that's the theory, and this man went to the Police
4 Department and complained and said, "You are investigating
5 Caringi," and found an automobile registered erroneously.

6 THE COURT: Mr. Wallach, on what basis do you
7 claim it is relevant to the charges against Mr. Jacobs?

8 MR. WALLACH: Firstly it hardly would behoove
9 the defendant to engage in a criminal method to collect
10 a debt or enforce repayment and at the same time going
11 to the Police Department of the City of New York and complain
12 that he was the victim of malfeasance on the part of Caringi
13 and sum up and say he did not enter a conspiracy to violate
14 a federal statute and indeed he didn't. I would also
15 like to suggest to your Honor, and the U.S. Attorney
16 might get up and say, "Look what these people have done.
17 Why didn't they go to the authorities?"

18 THE COURT: We can cure that by getting her
19 to agree not to. I assume she would but the question is
20 whether you are positively entitled to make the argument
21 on your own. Do you want to comment?

22 MS. JONES: Number 1, those documents from
23 a quick look show you that Mr. Jacobs went in July, Mr.
24 Jacobs or at least Mr. Frankel for Mr. Jacobs went to the
25 police in July, some three months after.

1 DE. 7

2 THE COURT: You are free to argue that.

3 MS. JONES: Even if he had gone at the
4 same time, whether or not he went to the authorities
5 has no bearing on whether or not he used criminal means.

6 THE COURT: That's the question. Mr. Wallach
7 says he wants to be able to argue to the jury that it is
8 some evidence of the fact that a man who would go to report
9 a robbery from him would not be likely to do that if he
10 were playing around with criminals trying to threaten
11 somebody. I don't buy the argument but I think there
12 is enough to it so that the doubt should be decided
13 in favor of the defendant. I will allow you to put that
14 in. I will allow Ms. Jones to make any comments she
15 wants to.

16 MR. WALLACH: Not to overdo it but Mr. Gilbreth
17 has reminded me of something else. That's during the
18 period of the conspiracy, July, '76. May I have this marked
19 in advance and presented in evidence?

20 MR. DAVIS: If your Honor please, I renew my
21 motion to put the record of the Police Department of
22 Walnut Creek into evidence.

23 MS. JONES: I object.

24 THE COURT: I don't see any basis for doing it.
25 Denied.

1 bmhh 8

2 (In the courtroom)

3 MR. WALLACH: On behalf of the defendant Jacobs
4 may I have this entered into evidence?

5 THE COURT: Yes. Have it marked first and we
6 will have to have a stipulation as to what it is.

7 MS. JONES: I would like an opportunity to
8 take a couple of minutes to look at ti.

9 MR. WALLACH: Before we enter the stipulation
10 I will be glad to give it to Ms. Jones.

11 THE COURT: Let her look at it now and then
12 we will establish the stipulations as to what it is.

13 (Defendant Jacobs Exhibit E marked for
14 identification.)

15 THE COURT: I understand there is one juror who
16 has a 5 o'clock time limit for parking. If we get that
17 late, I will take a short recess so you can do something.

18 MR. GILBRETH: May I inquire, your Honor?

19 THE COURT: Ms. Jones is still looking at this.

20 MS. JONES: Thank you, your Honor.

21 THE COURT: The government does not challenge?

22 MS. JONES: I do not challenge.

23 MR. WALLACH: May I have it marked and at your
24 Honor's convenience may I pass it to the jury?

25 THE COURT: What I prefer, Mr. Wallach, is this.

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1 bmhh 9

2 You are offering this in evidence and I would suggest
3 that you just read whatever excerpts you want to the
4 jury. It is being marked.

5 MR. WALLACH: I would like to read to the jury
6 Jacobs Exhibit E which is a record of the New York City
7 Police Department of a complaint made by Mr. Jacobs against
8 Jack Caringi, July of 1976, where a complaint was made
9 about a check which didn't clear in the amount of \$6,500.
10 That's what the report says and that it related to a
11 sale of jewelry for \$5,800. I would like to say and
12 summarizing this, that this case would remain with--

13 THE COURT: Don't summarize. Read it.

14 MR. WALLACH: The case remained active for
15 a certain period of time.

16 THE COURT: Read it.

17 MR. WALLACH: On a certain document it states,
18 "Case active."

19 THE COURT: As of what date?

20 MR. WALLACH: This is not dated but attached
21 to a sheet of paper. It is July, 1976. I would like to
22 read the following if I may. "The assigned interviewed
23 the complainant at MTIU office at 7/7/76 and he states
24 that a male known only as Jack Caringi called him on the
25 phone and by using the name of a friend of the complainant

1 bmhh 11

2 THE COURT: Yes.

3 MR. WALLACH: I am now reading and I will omit
4 the heading and quote the following which is the
5 complete quotation "Assigned reinterviewed the complainant
6 on 8/31/71 and he states he believes the perpetrator
7 known to him as Jack Caringi operated a motor vehicle
8 bearing a plate number 248EUF-NJ. Check made through ICS
9 reveals that the said plate was issued to Genway Corp. of
10 1165 Kennedy Boulevard, Bayonne, New Jersey. Check made
11 through the telephone so revealed no such corporation
12 listed at the above address."

13 That is all I will read from this.

14 THE COURT: Thank you. It is received in evidence.

15 (Defendant Jacobs Exhibit E received in evidence.)
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1 nshh 2

2 MR. DAVIS: There is an affidavit there of service.
3 I have subpoenaed the attorney and he is away for two weeks.
4 I should be able to put in a document.

5 THE COURT: I won't allow a document versus
6 a witness. To get the man who served him, that is all right.

7 MR. DAVIS: We are on a Catch 22 situation. If
8 he is not served he is not divorced.

9 THE COURT: Argue that to the jury.

10 MR. DAVIS: If you permit me to do that, fine.
11 If he is served he was divorced on a later date.

12 THE COURT: Those are facts that you are free
13 to argue.

14 MR. DAVIS: As long as your Honor gives me
15 that latitude I am satisfied. I wanted to call that
16 to your attention.

17 (Open court. Jury present.)

18 THE COURT: Mr. Wallach?

19 MR. FRANKEL: I am here in his place, your Honor.

20 THE COURT: Mr. Frankel, does Mr. Jacobs have
21 any other material?

22 MR. FRANKEL: We have no other witnesses, your
23 Honor.

24 THE COURT: You rest?

25 MR. FRANKEL: Rest, your Honor.

1 nshh 4 Edwards-direct

2 MR. GILBRETH: It is a matter of couasing on it.

3 Q As the agent in charge of this case, have you
4 reviewed and collected all of the reports in the government's
5 possession which relate among other matters to Jack and
6 Geraldine Napoli's testimony to this jury that Michael
7 Sparber threatened Geraldine on April 5, 1976?

8 MS. JONES: I object. I don't see the relevance
9 and I would like an offer of proof.

10 MR. GILBRETH: I will be glad to do so.

11 THE COURT: I understand what Mr. Gilbreth is
12 doing. You want to find out if there was any report made
13 to the government about this complaint.

14 MR. GILBRETH: Precisely.

15 A No. There was no report that I know of.

16 MR. GILBRETH: That cuts through it.

17 Q I have one summary question. Is it fair to say
18 that none of the reports, FBI reports or any other kind
19 of reports in the possession of the government contain any
20 report of any contention that Geraldine Napoli was threatened
21 by Mr. Michael Sparber on April 5, 1976?

22 A I don't know that.

23 Q Let me narrow it to all of the reports known
24 to you.

25 A As far as the Federal Bureau of Investigation report

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2 to the jury.

3 THE COURT: Ladies and gentlemen, our discussion
4 may be brief enough that it may be possible for you to
5 stay there. We will go into the robing room.

6 (Robing room)

7 THE COURT: I take it you gentlemen wish
8 to make motions.

9 MR. GILBRETH: On behalf of Mr. Sparber we
10 ask for a judgment of acquittal and in the alternative
11 we move that the indictment be dismissed.

12 THE COURT: The motion is denied.

13 MR. WALLACH: On behalf of Jacobs I move under
14 Rule 29 for a judgment of acquittal and for any other relief
15 that your Honor may deem appropriate. I want to make for
16 the record, I believe I previously argued, aside from
17 the fact that under the circumstances of this case I don't
18 see how reasonable men can differ as to the guilt of
19 these defendants, the act itself or the definition of
20 extension of credit is void on its face and to the fact
21 in this case. I say in its face the statute in
22 Section 891, subdivision 1 defines what it is to extend
23 credit and while the language is very broad, too broad,
24 I submit states valid or invalid and however arising.
25 If your Honor construes this statute to apply to the fact

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2 in this case my client is being subjected to an ex post
3 facto law. There is nothing in the statute that says
4 if a person was defrauded and concedingly he was and if
5 his will is not overborne by physical duress but not given
6 to extend credit the statute does not cover that kind of
7 case looking at the legislative history and if your Honor
8 construes it as covering this case we were not given notice.
9 We were denied due process and all other constitutional
10 platitudes. The government supplied him with funds
11 which he paid the others namely the \$1,000 payment.

12 THE COURT: Supplied Napoli.

13 MR. WALLACH: Yes. Him is with Napoli. This
14 was not an extension of credit on the part of my client
15 or any other defendant. It was government funds. As
16 a matter of due process of law.

17 THE COURT: I don't think the extension of credit
18 necessarily depends on where the sources come from. It is
19 acceptance of some funds less than the full payment is
20 evidence which the government may argue constitutes
21 extension of credit. Your argument has been made to higher
22 courts than this and it has not been accepted and therefore,
23 your motion is denied.

24 MR. WALLACH: Can I have this argument made
25 retroactive to the prior motion in case I didn't encompass

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2 any of these matters.

3 THE COURT: If that is legally possible and
4 not constitutionally platitudeness.

5 MR. DAVIS: On behalf of defendant Bufalino
6 I move for a judgment of acquittal. I further contend
7 the testimony here is insufficient here to sustain a verdict
8 of guilty.

9 THE COURT: I disagree with you on that. It is
10 obvious that the matter has to go to the jury and your
11 motion is denied. It is 20 past 10 and we haven't heard
12 from Mr. Sparber. To expect to be able to finish com-
13 fortably today since I have to leave here at quarter to
14 4 and we have an estimate of three and a half hours
15 of summation and some lunch to take would be pushing
16 it hard. Unless anybody disagrees, I will excuse the
17 jury until 9:30 Wednesday morning. I intend to keep you
18 all for the time that we discussed.

19 MR. GILBRETH: On behalf of Mr. Sparber I apologize
20 for any inconvenience to the Court or counsel. I will do
21 everything possible to have him come here. He complained
22 last week about problems and this culminates it. I have
23 now prepared my summation and it may go as long as 60 minutes.
24 If I can cut it down I will do that. It may go that extra
25 15 minutes.

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2 This court is about to charge the jury.
3 All spectators wishing to leave may do so now. Those
4 electing to stay must remain seated until its comple-
5 tion.

6 Will the marshal please lock the door.

7 CHARGE OF THE COURT

8 (Lasker, J.)

9 THE COURT: Ladies and gentlemen, before
10 I commence my charge to you, first I want to know if you
11 can all hear me. Can you?

12 Second, there are a couple of comments
13 that I want to make in passing about statements made
14 this morning in the heat of passion, a couple of items
15 came up that I think perhaps deserve being put in
16 focus.

17 Mr. Davis and Miss Jones differ considerably
18 as to what to make of the exhibit from the Holiday Inn
19 down in Florida and whether the last page is missing
20 or not and, if so, whether that is significant.

21 That's entirely up to you, ladies and
22 gentlemen. Whatever they had to say in comment about
23 it is not evidence, as I told you that nothing else which
24 they or I or anybody else has to say about the fact is
25 evidence.

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2 Moreover, I think Miss Jones made a refer-
3 ence to thugs in her final statement which I think is per-
4 haps unsupported by the evidence, but that again is a
5 question for you to decide and I'll leave it at that.

6 Now, ladies and gentlemen, I wish that I could
7 deliver my charge to you simply talking extemporaneously
8 as I am at the present time. I am more comfortable
9 that way and I think it is a more effective method of
10 doing it than reading a charge is, but the stakes
11 are high in cases of this kind on both sides and the law
12 has certain complications, and in order to be sure that
13 judges say precisely what they want to say to the juries
14 it's become fairly customary in this court for the
15 judges of this court, at least, and I think many
16 others, to read their charges.

17 I tell you that for two reasons. First
18 of all, I want you to understand why I will be reading
19 to you and, secondly, I think there is a tendency on
20 the part of all of us, and I know there is on my part,
21 sometimes to read more quickly than I might speak
22 otherwise. I will do my best to avoid that but if
23 for any reason I read too fast or I speak indistinctly
24 please raise your hands and let me know because I want
25 to be sure that you understand everything I have to say.

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Moreover, while I don't want to introduce personal notes more than necessary, I think you may remember my having said that I had some oral surgery done a week or two ago and that makes it a little more difficult for me to articulate my words, so that might be another reason why you couldn't understand and if you don't, don't be embarrassed, tell me.

Ladies and gentlemen of the jury, now that you have heard the testimony and the arguments of counsel, the time has come to instruct you as to the law governing the case.

You have been chosen and sworn as jurors in this matter to try the issues presented by the allegations of the indictment and on your determination of the facts -- and I stress the words "your determination" -- to decide under the law as I shall instruct you whether the government has or has not proven either of the charges of the indictment against Mr. Bufalino or Mr. Sparber or Mr. Jacobs beyond a reasonable doubt.

I will discuss those charges with you in detail in a moment. Before that, I want to give you a few preliminary and general instructions.

First, you are to perform your duties as

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2 jurors without bias or prejudice to or for anybody,
3 whether the government or any of the defendants. The
4 law does not permit jurors, and I will not permit
5 jurors, to be governed either by sympathy or swayed
6 by prejudice or public opinion.

7 Second, we start with the proposition that
8 we started with at the outset of the trial, that
9 is, that the law presumes every one of these gentle-
10 men to be innocent against both charges made against
11 him.

12 You will recall that when you were selected
13 I specifically asked each one of you if you could
14 enter into the discharge of your duties presuming each
15 defendant to be innocent of each charge until or unless
16 proven guilty beyond a reasonable doubt after your
17 own deliberations, and each of you gave me the answer
18 "yes."

19 That presumption of innocence is sufficient
20 to acquit any defendant unless and until you as jurors
21 are unanimously satisfied beyond a reasonable doubt
22 of that defendant's guilt on the particular charge from
23 all of the evidence that has been presented.

24 At the outset of the case I told you the
25 defendants have no obligation to put any witnesses before

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2 you because they are presumed innocent. The defend-
3 ants did not testify in this case. That was their
4 right, and you may not draw any inference against them
5 because they did not testify.

6 Since the defendants are not required to
7 prove anything or to put witnesses before you, they may
8 rely on cross examination by defense counsel of the
9 government's witnesses. Such cross examination
10 may raise a reasonable doubt and if you find that it
11 does, then of course you would be obliged to acquit
12 that defendant on that charge.

13 The burden or responsibility is on the
14 government to prove a defendant guilty beyond a reason-
15 able doubt and I will advise you later in the charge
16 what the elements of those offenses are.

17 Third, I want to remind you of what I re-
18 minded you at the outset of the trial, that is, that
19 the existence of an indictment does not constitute evi-
20 dence against any of the defendants but is merely a
21 method of bringing a charge against him.

22 The indictment in this case contains two
23 counts, as you know. Each count contains a separate
24 offense, and each of the charges must be considered
25 separately against each defendant.

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Now, I have said and counsel have said many times throughout the case, and certainly in their summations, that the government has assumed the burden of proving the defendants guilty beyond a reasonable doubt. Let me define that important term for you at the outset.

A reasonable doubt is not a vague, speculative or imaginative doubt. It is a doubt which, as the phrase suggests, is based upon reason which comes either from the evidence that you have seen and heard or from the lack of evidence that you feel you have not seen or heard. It is a doubt which a reasonable man or woman would entertain. It is a doubt -- and I think this is the best definition -- which would cause reasonable men and women like yourselves to hesitate to act in connection with matters of importance in your own private lives.

Let's say you have an important decision to make. How do you go about making that decision? You think about everything you know about it and you think about everything you would want to know and have not been told and you say to yourselves: "Do I have enough information? Do I have enough dependable information so I am ready to act?" If you say, "I don't

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2 have enough," then you have a reasonable doubt. If
3 you say, "I do," then you may proceed.

4 A mere suspicion cannot justify conviction.
5 Suspicion is no substitute for evidence, nor is it suffi-
6 cient to convict if you find that the circumstances
7 merely render the guilt of the particular defendant
8 probable. The law does not deal in probabilities.

9 In saying, however, that the government
10 must prove a defendant guilty beyond a reasonable doubt
11 if there is to be a conviction, I do not mean to say
12 that the government is required to prove guilt
13 beyond all possible doubt. Indeed, in human affairs
14 it is hard to think of anything we can prove beyond
15 all possible doubt with the exception of mathematical
16 propositions, and the issues in this case are not
17 mathematical propositions.

18 The proof must be, however, of such a con-
19 vincing character that you would be willing to rely
20 and act on it in the most important decisions of your
21 own affairs.

22 The evidence in this case, as you have been
23 told on several occasions, consists of the testimony
24 of the witnesses, the exhibits which have been received
25 in evidence, the facts which have been stipulated or

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agreed by counsel. You have to decide the case based solely on the evidence, but in your consideration of the evidence you are not limited to what I may call the bald statements of the witnesses. By using the word "bald," I do not mean to suggest anything about the character of the testimony but I mean that you are entitled to and you are obliged to think behind the mere words that were uttered. Indeed, ladies and gentlemen, in this case, as in many, there is no doubt that the outcome of the case depends substantially on your determination of what witnesses you believe and the extent to which you believe them.

In deciding the many questions before you, it is your job to determine the credibility or believability of the witnesses who have testified here. How do you go about that? Perhaps the best answer is to say that you determine the truthfulness or accuracy or weight to be given to a witness' testimony in the same way that you determine questions in your own personal lives.

We are all constantly called upon from day to day to determine how much confidence we place in the statements that people make to us. The truthfulness or dependability of a witness, as that of any other

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person, can be determined by his demeanor or look, his or her relationship to the case and to the parties, the possibility of his or her being biased or partial, or of his or her not being biased or partial, the stake which he or she may have in the outcome of the case, the reasonableness or unreasonableness of the statements made, the strength or weakness of the recollection of the witness and the extent to which what the witness has said has either been corroborated or contradicted by the defendant or other witnesses or other evidence.

Of course, a witness' testimony may be impeached by his own prior inconsistent statements unless there is some explanation for the inconsistency. In ordinary life when you need to determine the truthfulness of a person you ask yourself, don't you, as you do here: Did he impress me -- or she? Did his or her version seem straightforward and candid or not? Did he or she seem to be trying to hide some facts? Did he or she have any motive to testify falsely or have no such motive?

The ultimate question for you to determine and for you to decide on in passing on the credibility of a witness is whether you believe that he or she told

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the truth. It is for you jurors, and you alone, to determine that question and in making these suggestions I have given you only guidance and I am not attempting to decide the question for you.

If you find that any witness has wilfully testified falsely as to any material -- that is, significant or important -- matter, you may reject the entire testimony of that witness or you may accept such portion of it as you believe and reject the rest.

Now, Jack Napoli has testified and there is no dispute about it, that the government has made payments to him and on behalf of himself and his family and assisted him in other ways. You are entitled to consider these facts in determining the weight you attribute to his testimony. By making that remark, however, I am not suggesting, any more than I did with the other guidelines I just gave you, that a witness who receives benefits from the government cannot testify truthfully but only pointing out to you that you may consider such facts in deciding what weight to give to a witness' testimony.

Ladies and gentlemen, as I have said, your determination in this case must be based upon the evidence.

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There are two types of evidence which we normally speak of and I am sure you have heard them referred to often. One is called direct evidence. That is the evidence of an eye or ear witness. "I have heard it," such a witness would say, or "I have seen it." The other is indirect and is generally called circumstantial evidence. Circumstantial evidence is defined as the proof of a chain of events or circumstances which point to the existence or nonexistence of facts as to which there was no eye or ear witness. The law makes no distinction as to the importance or weight of such circumstantial as opposed to direct evidence. It requires only that you, the jury, find the facts in accordance with all the evidence in the case, both direct and circumstantial, beyond a reasonable doubt.

Now, ladies and gentlemen, both the United States attorney and the attorneys for the defendants have from time to time throughout the course of the trial objected to introduction of evidence and addressed arguments to the bench. It is the duty of the attorneys on both sides to make such objections when any of them believes that the other side is proposing to put into evidence or ask questions about something

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2 that is not properly admissible. I want you to
3 understand that when I have sustained an objection
4 to a question or overruled an objection, that does not
5 indicate any attitude of mine as to how the case should
6 be decided. What it does mean, and the only thing
7 it means, is that if I have sustained an objection or
8 told you to disregard information, you are to disregard
9 the question or the answer, as the case may be, and
10 where I have ruled against a question you are not to
11 try and please do not try and figure out what a witness
12 might have answered if he had been allowed to do so.
13 That would be the sheerest speculation and it would
14 be unjust to everybody involved.

15 I remind you again also of what I think
16 counsel on both sides have asked me to tell you before.
17 That is, it isn't the question that counts but the an-
18 swers which are the evidence.

19 Now, ladies and gentlemen, that I have in-
20 structed you as to the manner in which you should con-
21 sider the evidence, and since you have heard long sum-
22 maries of the respective contentions of counsel, I will
23 turn to the substance of the charges against the de-
24 fendants.

25 The indictment in this case contains two

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counts. Each count, as I have said, charges a separate crime, and of course each defendant's case must be considered separately and must stand or fall on the basis of the evidence against him and not someone else.

Count 1 charges all the defendants with conspiring to violate Section 894 of Title 18 of the United States Code. The part of that law, which is a law passed by Congress, with which we are concerned reads, and I will now quote the law:

"Whoever knowingly participates in any way or conspires to do so in the use of any extortionate means (1) to collect or attempt to collect any extension of credit or (2) to punish any person for the nonrepayment thereof shall commit a crime."

Count 2 of the indictment charges all of the defendants with actually committing a violation of the law which I have just read.

Let me discuss with you now count 1.

Count 1 charges the three defendants with conspiring to violate Section 894, and in particular by conspiring wilfully and knowingly to use extortionate means involving the use of implicit or explicit threats

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of the use of violence to cause harm to the person or property of Jack Napoli in order to collect and attempt to collect from Jack Napoli extensions of credit made by Herbert Jacobs and to punish Jack Napoli for the nonrepayment of said extensions of credit.

Before I describe to you the elements of the offense of conspiring to violate Section 894, let me define the term "extension of credit" as used in the law.

An extension of credit means the making or renewing of a loan or the entering into an agreement, tacit or express, by which payment of any debt or claim, however arising is deferred, that is, put off or delayed.

Now, as you know, the defendants are charged with using extortionate means to collect the debt or extension of credit alleged from Mr. Jacobs to Mr. Napoli. The fact that the debt or extension of credit in this case came about because Jack Napoli received jewelry from Mr. Jacobs without paying for it does not prevent your finding an extension of credit.

By giving you this instruction, I do not mean to tell you that you must find that there was an extension of credit from Jacobs to Napoli. That is

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for you to decide. But I do wish you to understand that the mere fact that the property here taken was taken without paying for it does not prevent it from being an extension of credit within the meaning of the law, just as much as an ordinary loan would be an extension of credit within the law.

Let me now define the term "conspiracy" for you. A conspiracy is an agreement between two or more people to violate the law.

Ladies and gentlemen, I am concerned very often that our charges to you -- that is, the judge's charge to you -- are too complicated and that we overdo them. If you remember nothing other about the charges that I am giving you, be sure that you certainly do remember what I have just told you about what a conspiracy is. A conspiracy is nothing more or less than an agreement between two or more people to violate the law.

In this case, the government contends that the purpose of the conspiracy was to use extortionate means to collect an extension of credit. Before you may find any of the defendants guilty under the conspiracy charge, you must find that the government has proven beyond a reasonable doubt both of the two follow-

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2 ing elements:

3 First, you must find the existence of the
4 conspiracy charged. Obviously, you cannot find a
5 defendant guilty of conspiring unless you do find that
6 the conspiracy which is charged actually existed, that
7 is, that there was an extension of credit, and that the
8 defendants conspired to use extortionate means to
9 collect that extension of credit.

10 Second, you must find that the defendant
11 whose case you are considering at that time -- be-
12 cause you will be considering these cases separately --
13 knowingly and wilfully joined in that conspiracy.

14 Let's talk first about the first element,
15 the existence of the conspiracy.

16 As I have told you, conspiracy is an agree-
17 ment of two or more people to violate the law. The
18 gist of the crime is the unlawful agreement to do so.
19 It doesn't matter whether the defendants ever accomplished
20 what they wanted by the plan, although the government
21 claims here that the defendants alleged plan did succeed.
22 A conspiracy need not be successful in order to
23 constitute an illegal act or offense. It is the very
24 agreement itself to violate the law which constitutes
25 in this case the crime.

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2 Now, it has been said by counsel on both
3 sides that to establish a conspiracy the government is
4 not required to show, or would not be expected to show,
5 that two or more people sat around a table and entered
6 into a solemn pact to violate the law. You may find
7 that the existence of the conspiracy has been established
8 if from the proof of all the relevant facts and cir-
9 cumstances you find, beyond a reasonable doubt, of course,
10 that at least two of the alleged co-conspirators came to
11 a common agreement to carry out the criminal acts charged
12 in the indictment.

13 Express language or particular words are
14 not required to indicate an assent or an attachment or
15 agreement to a conspiracy. When people in fact
16 decide to enter into a criminal conspiracy, much is
17 often left, as you can understand, to the unexpressed
18 understanding. You must first determine, therefore,
19 whether or not the proof establishes that the conspiracy
20 charged in the indictment actually came into exist-
21 ence.

22 It is not necessary, however, that you find
23 that all of the co-conspirators alleged in the in-
24 dictment joined in the conspiracy, but obviously you must
25 find that at least two people did or you can't have a

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conspiracy.

In deciding this first element, you should consider all of the evidence which has been submitted with respect to conduct, acts and declarations of each alleged conspirator, and you may make such inference as may be reasonably drawn therefrom as to each of the defendants.

If, upon consideration of the evidence, you find beyond a reasonable doubt that the minds of at least two of the alleged co-conspirators met in an understanding to violate the law, then the proof of the existence of the conspiracy is complete.

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If you conclude that the conspiracy charged in the indictment did exist, you must next determine whether the defendant whose case you are then considering participated in the conspiracy with knowledge of its unlawful purpose and in furtherance of its unlawful objectives.

Mere knowledge by a defendant of the existence of a conspiracy or of the illegal acts on the part of other alleged co-conspirators, or mere association with them, is not sufficient in itself to establish a defendant's membership in a conspiracy.

To determine membership you must find beyond a reasonable doubt that the defendant in question joined the conspiracy knowingly and participated in it intentionally, that he was aware of the purposes and objectives of the conspiracy and entered into it with the specific intent to violate the law. This determination, whether the defendant became a member of the conspiracy, must be based on the evidence as to that defendant alone and not as to anyone else.

To have the requisite knowledge the defendant need not have known the full extent of the conspiracy and all of its activities. Every member of the conspiracy or, rather, each member of the

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conspiracy may perform separate and distinct acts at different times and at different places. Some conspirators may play a major role in the conspiracy and others a minor role.

The guilt of the conspirator is not governed by whether he played a great or small role in the conspiracy. A conspirator may join a conspiracy at any point in the conspiracy and be held responsible for all that had been done before he joined and all that was reasonably done by conspirators in pursuance of the conspiracy afterwards and while he remained a member. The question is one of intent and that is one of the major facts for you to decide. It concerns what was in the particular defendants mind and the purposes for motivating his course of conduct.

Of course, medical science has not yet devised an instrument to record wilfulness or intention. Those are mental processes. Often direct proof of them is not available. Accordingly, intent may be legally determined from the acts and conduct of a person and the circumstances surrounding those acts and conduct and such reasonable inferences as may be drawn from the facts.

In connection with the charges in this in-

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2 dictment, it is not necessary for the government to prove
3 that the defendant in question actually intends to cause
4 physical injury to Jack Napoli but only, as I believe
5 I have instructed you, that the defendants intended to
6 threaten Jack Napoli with harm to his person or property
7 and that the words or action of the defendant in ques-
8 tion in fact constituted express or implied threat.
9 However, it is the government's obligation to prove
10 beyond a reasonable doubt that the particular defend-
11 ant whose case you are considering acted wilfully
12 or knowingly.

13 An act is done knowingly if it is done
14 voluntarily and on purpose and not because of a mistake
15 or an accident or a negligent or some other innocent
16 reason.

17 An act is done wilfully if it is done know-
18 ingly and deliberately. Wilful does not mean a defend-
19 ant in addition to knowing what he was doing must also
20 have known or supposed that was breaking the law.

21 While the indictment charges in count 1
22 that the conspiracy began and ended on or about certain
23 dates, it is not essential that the government prove that
24 the conspiracy started and ended on or about those dates.
25 It is enough if you find that in fact a conspiracy was

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formed and that it existed for a substantial period of time within the time frame alleged in the indictment, which I think runs from February of 1976 to the date of the indictment, which is in October of 1976.

I come now, ladies and gentlemen, to discuss count 2 of the indictment. That count charges the defendants with violating Title 18, Section 894. That statute provides in pertinent part as follows:

"Whoever knowingly participates in any way with the use of any extortionate means to collect or attempt to collect any extension of credit or to punish any person for the nonrepayment thereof shall commit a crime."

I need not remind you again of the definitions of the terms involved.

In order to convict any of the defendants of the crime charged in count 2 you must find beyond a reasonable doubt as to that defendant all three of the following elements:

1. That on or about the dates stated in count 2 a debt was owing to the defendant Herbert Jacobs by Jack Napoli.

2. That on or about the dates stated in count 2 the defendant whose case you are considering

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2 made an attempt to collect the debt owed to Herbert
3 Jacobs. That is, that on or about those dates that
4 defendant attempted to induce Jack Napoli to pay his
5 debt to Herbert Jacobs.

6 3. In so attempting to collect the
7 debt, that the defendant, acting unlawfully, wilfully
8 and knowingly, in any way participated in the use of an
9 extortionate means of collection.

10 I think I have told you but if I haven't I
11 will state now, the statute defines an extortionate
12 means as any means which involves an express or
13 implicit threat of use of violence or other criminal means
14 to cause harm to the person or property of any person.
15 Violence means simply physical harm of any kind.

16 In deciding whether a defendant wilfully
17 made implied threats of physical harm or other criminal
18 means to Jack Napoli, you should take into consideration
19 all of the evidence in the case bearing on what a
20 particular defendant intended by his statements and
21 what he actually said to the victim or what he knew that
22 other people had said.

23 Words, harmless of themselves, may take on
24 a threatening meaning in the context in which they are
25 used. On the other hand, you may decide that the

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words used by defendant in the full context of what was said carried no such threatening significance. The question for you to decide is whether the defendant whose case you are considering intended by his words or actions to give the impression that physical harm or other criminal means would be used against Jack Napoli if he refused to pay. If so, what in the full context of the conversation or of all of the evidence that you have heard the words actually used by the defendant reasonably appear to you to have stated such threats explicitly or by implication.

As I told you with regard to count 1, it is also true as to count 2 that in order to convict you need not find that the defendant actually intended to cause physical injury to Jack Napoli. You need only find that the defendant intended to threaten Jack Napoli with harm to his person and the words or acts constituted an expressed or implied threat.

It is not necessary that the government prove that Jack Napoli was actually placed in fear by the defendants. Actual fear of harm is not an element which the government must prove in this case. To prevail, the government need only show that the defendant intended to make a threat of use of violence or other criminal means to cause harm to Jack Napoli.

1 nssh 1

2 Ladies and gentlemen, there is another basis
3 upon which you may find a defendant guilty under Count 2
4 even though he : not literally commit the act himself.
5 Under the law, any person, who commits an act in violation
6 of a criminal statute, that is a law passed by Congress,
7 of course commits a crime. It is also a crime to aid or
8 abet someone else to commit a crime. Accordingly, if you
9 should find beyond a reasonable doubt that any of the defendants
10 named in Count 2 committed the crime charged and that another
11 defendant aided or abetted that first defendant you would
12 have a sufficient basis for finding the guilt of the second
13 defendant as to Count 2.

14 To find that a defendant aided or abetted
15 someone else to commit a crime, you must find in some positive,
16 clear way that that defendant associated himself with the
17 crime, that he participated in it not just casually but is is
18 something he really wished to bring about. You must find that
19 he thought by his actions or desired and intended by his
20 actions to make the venture charged succeed. Thus, in order
21 to find the defendant guilty of aiding or abetting someone else
22 you must of course find something much more than a mere knowledge
23 on his part that a crime was being committed for a mere specta-
24 tor at a crime is not a participant however unfortunate his
25 conduct would be. If you stood watching somebody else

1 nssh 2

2 hold up another person with a gund, you cannot by that action
3 or in action alone be found to aid or abet the assailant.

4 The government is not required to prove the
5 essential elements of the offense as defined in these
6 instructions by a particular number of witnesses. The
7 testimony of a single witness or more may be sufficient
8 to convince you beyond a reasonable doubt of the existence
9 of an essential element of the offense charged if you
10 believe beyond a reasonable doubt that the single or
11 more than single witnesses are telling the truth.

12 I think by now it is undisputed but I
13 instruct you that the oral interceptions, that is the taped
14 conversations admitted into evidence, were lawful and
15 proper oral interceptions since Jack Napoli a party to the
16 conversations consented to having his oral conversations
17 recorded and under the law such oral interceptions are legal.

18 I have come nearly to the end of my
19 instructions. In a sense the most important part is what
20 I am about to say. That is with regard to your role as
21 jurors. It is for you and you alone to decide whether any
22 of the defendants is guilty of either of the charges against
23 him.

24 I know you will try these issues in accordance
25

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2 with the serious oath that you took as jurors when you
3 promised that you would well and truly try the issues
4 joined in this case and as you may remember, based solely
5 on the evidence which you have before you in this trial
6 and the instructions as to the law that I have now given
7 You, render a true and just verdict. I like that phrase
8 "well and truly try the issues joined in this case." It
9 goes back a thousand years or so, ladies and gentlemen.

10 Its old fashioned flavor should mean something to you and
11 remind you of the hundreds of thousands of juries who have
12 performed this function before you and you must a true
13 verdict render based upon the evidence and only the evidence
14 that you have heard in this court. In order for you to reach
15 a verdict of guilty or not guilty on either count as to
16 any defendant your verdict must of course be unanimous.
17 That is, everybody must agree on that particular verdict.
18 In spite of the requirement of unanimity each of you must
19 decide each count as to each of the defendants individually
20 and in accordance with your own conscience but only after
21 deliberation with your fellow jurors to determine whether
22 you believe a just verdict is being reached. You should not
23 hesitate to change your minds if you became convinced
24 that your original view of the case does not accord with
25 the facts or the law. On the other hand you should not

1 nshh 4

2 change your view just for the matter of reaching a
3 verdict for a matter of **convenience**. I have no reason to
4 believe that you will not be able to reach a unanimous
5 verdict one way or another as to the matters put before
6 you. Ladies and gentlemen, you have the right to have
7 any of the evidence sent in to you, any of the exhibits,
8 that is, to have any of the testimony read back to you and
9 to have any of the tapes played to you.

10 It is customary in our court for the juror who
11 sits in the number 1 seat to act as the foreman or forelady
12 of the jury. I will ask Ms. Henry to do that in this case.
13 That doesn't mean she will have any particular authority
14 that any of the rest of you don't have but she will merely
15 preside at your discussions and send any communications
16 which the jury has through the marshal who will be standing
17 outside your door to the court. If you do wish to ask for
18 any exhibits it will be helpful if you will explain as clearly
19 as possible what exhibits you want so we can locate any
20 exhibits you want. If you do wish to have the testimony
21 of a witness read back it will be helpful to explain not
22 only who it was but a particular subject if there is one,
23 that you are interested in so we can locate that testimony
24 and have it read to you as quickly as possible.

25 Ladies and gentlemen, I have prepared and I will ask

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2 the clerk to now go into the robing room for me to get from
3 the desk because I seem to have left it there, a verdict
4 list. That verdict list consists of the names of each
5 of the defendants together with a reference to each of the
6 two counts and with a blank indicating not guilty or guilty
7 as the case may be I will give a copy of that or ask
8 the clerk to give a copy of that to Ms. Henry right now.
9 When the jury reaches its verdict you can put an X mark in
10 the appropriate space, Ms. Henry. I have now come to the
11 very end of my instructions. I wish to meet briefly with
12 counsel in the robing room to see whether they think
13 my instructions need any clarification for you. Please
14 wait in the jury box and we will be back very soon.

15 (Robing room)

16 MR. GILBRETH: Your Honor, I do have two requests
17 with respect to your charge and one request as to another
18 matter. First, your Honor, again, I renew my objection
19 to your charge with respect to an extension of credit.
20 It is a difficult thing to define. The words in the statute
21 as I read them, your Honor, is that there is an extension
22 of credit within the meaning of the statute only if there
23 is either a loan or an extension of a loan or second, there
24 is some form of agreement whereby a debt or some other
25 transaction is extended. As I took notes, your Honor, you

1 nshh 6

2 seem to be saying, at least at one point, that it was
3 an extension of credit if there was a debt. I think
4 that is incorrect, your Honor. I know you focused on it
5 and you treated it in other aspects of your charge.

6 THE COURT: I don't think I said there is an
7 extension of credit if there was a debt alone.

8 MS. JONES: I didn't hear that. I think your
9 Honor read the definition from the statute.

10 THE COURT: I read the definition and the only
11 thing extraordinary about this case where there is clear
12 disagreement among counsel and I have decided in favor
13 of the government is that the mere fact that the alleged
14 extension of credit arose in the circumstances which
15 everybody agrees that it did arise in here does not prevent
16 it from being an extension of credit within the meaning
17 of the statute. I believe that is the law. If it is not
18 there will be acquittals here or rather reversals on appeal
19 if there is a conviction. We have discussed that at some
20 great length.

21 MR. GILBRETH: I will pass to the second point
22 and that is to renew my request for an uncalled witness
23 charge. I think there are two bases for that uncalled witness
24 charge. One basis is that the government in opening said
25 that there would be agent witnesses to testify to surveillance

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2 identification. There was an agent who testified to
3 voice identification of Bufalino and surveillance. There
4 was not an agent to testify with respect to voice identifica-
5 tion of Sparber and Jacobs.

6 Second, your Honor, I believe that it is fair
7 to say that Mr. Ginsberg has been retained by the government
8 on a per diem basis. He testified as the government's expert
9 during the suppression hearings. He has been in court every
10 day. I think that he is within the usual language of the
11 uncalled witness charge that has been endorsed by the
12 Court of Appeals and that is if it is within the power of the
13 government to produce a witness and so forth. He doesn't
14 contend you have to do this, your Honor--

15 THE COURT: It is clearly within the government's
16 power to call him. I don't think even the jury could question
17 that he has been sitting in the courtroom all the time.
18 I understand the reasons that compel you to make the request.
19 I disagree it is appropriate to emphasize those points. I
20 think you articulated the argument, a very sensible argument
21 before the jury and I will let it stay at that.

22 M. BRETH: My last point which doesn't have
23 to do with the charge and I make this as a request is that
24 I have reread the Court's voir dire of the jurors after
25 there was some note that came from the jury with respect to

1 nshh 8

2 glances or perhaps conduct on the part of the spectators.
3 I would request after the jury is excused that we be
4 allowed to conduct a voir dire of the alternate jurors
5 to further explore that. I don't want to talk to the alternate
6 jurors unless the Court would consent to being present.
7 If the Court won't consent I won't pursue it.

8 THE COURT: I have already examined them at
9 the time these events occurred.

10 MR. GILBRETH: You did. I think they probably
11 discussed this.

12 THE COURT: I think it is in the record that they
13 had discussed it at the time when the questioning occurred.

14 MS. JONES: Yes, it is.

15 MR. GILBRETH: The basis of my request is to
16 probe a little bit more deeply, if I may, in the Court's
17 presence of the alternate jurors. It struck me that might
18 be a compromise procedure where we don't confront the
19 jurors as counsel on this point but we do have an opportunity
20 to at least assure me --

21 THE COURT: I will consider it. Mr. Davis?

22 MR. DAVIS: I have nothing to add beyond what
23 Mr. Gilbreth has said.

24 THE COURT: Mr. Wallach?

25 MR. WALLACH: Maybe I haven't heard all the

1 nshh 9

2 evidence but your Honor did charge in the language of
3 the statute about other criminal means. I think the main
4 thing was a threat of violence. I don't know what other
5 criminal means could mean.

6 THE COURT: Do you want to comment on that, Ms.
7 Jones?

8 Mr. Wallach suggests and it is a question that
9 ought to be discussed that I used the words of the statute
10 as I did, that is that the statute condemns the use of
11 threat or other criminal means for the purpose of collecting
12 a debt and he questions whether there was another criminal
13 means.

14 MS. JONES: There is a kick and it is covered
15 by other criminal means.

16 MR. DAVIS: There is no testimony to that.

17 MS. JONES: Yes, there is.

18 THE COURT: Yes, there is.

19 MS. JONES: I don't see any reason to take
20 out other criminal means.

21 THE COURT: I am satisfied with that statement
22 and I will let it go at that.

23 MR. WALLACH: I take exception.

24 MS. JONES: I would oppose interrogating the
25 alternate jurors with respect to this. I read the voir dire

1 snhh 10

2 and I think it was covered. I don't see any purpose to it
3 beyond fishing around for I don't know what.

4 THE COURT: I think the defense is always required
5 to find facts to support the motion that he didn't get
6 a fair trial. I don't want Mr. Gilbreth, to pursue it all
7 over the world. He wants to see if they will tell us something
8 now that they didn't tell us before.

9 MR. DAVIS: I am most disturbed.

10 THE COURT: This is something we can talk about
11 after the jury has commenced deliberations.

12 (Open court)

13 THE COURT: Ladies and gentlemen, I think we have
14 told you everything we need to tell you. You are now
15 free to commence your deliberations as soon as the marshal
16 is sworn in. All right marshal please rise and come forward
17 for the oath.

18 (Marshal sworn)

19 THE COURT: Before you leave, I have the unhappy
20 duty of releasing Mr. Breswell and Mr. Napper. I can't
21 think of anything more disturbing than sitting on a
22 case for five or six days and then having been excused.
23 The law does not permit the alternates to deliberate with
24 the jurors if the jury is intact and it is. I thank
25 the alternates and counsel thanks you. I excuse you at

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2 this time. If you have any belongings in the jury room
3 I ask you to go get them and then return to the courtroom
4 so the jurors can commence deliberations in the jury room.
5 Please do that. Thank you. Gentlemen, will you please
6 wait there until the jury leaves.

7 Madam marshal, you can take the jury into the
8 jury room now.

9 (Jury left the courtroom at 3:30 P.M. to
10 deliberate.)

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2 because you didn't want to interrupt your summation and
3 therefore I rule that the sets shall be used.

4 MR. GILBRETH: I understand also that you ruled
5 over our objection that the transcripts can be before the
6 jurors while the tape is played.

7 THE COURT: Yes, I did and I remarked that as
8 I always do, and as every other judge always does, I have
9 advised the jur that the transcripts do not control but that
10 the audible materials controls.

11 (Note received from the jury at 4:40 P.M.)

12 (4:50 P.M. jury entered the courtroom.)

13 THE COURT: Madam clerk, will you please proceed
14 with the taking of the verdict.

15 THE CLERK: Members of the jury please answer
16 present when your name is called.

17 (Jury roll called; all present.)

18 THE CLERK: Madam forelady, has the jury reached
19 a verdict on all counts as to each defendant?

20 THE FORELADY: Yes.

21 THE CLERK: How do you find as to defendant Russell
22 Bufalino on Count 1?

23 THE FORELADY: Guilty.

24 THE CLERK: On Count 2?

25 THE FORELADY: Guilty.

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2 THE CLERK: How do you find as to defendant
3 Michael Sparber on Count 1?

4 THE FORELADY: Guilty.

5 THE CLERK: On Count 2?

6 THE FORELADY: Guilty.

7 THE CLERK: As to defendant Herbert Jacobs on
8 Count 1?

9 THE FORELADY: Guilty.

10 THE CLERK: On Count 2?

11 THE FORELADY: Guilty.

12 THE CLERK: Members of the jury please listen to
13 your verdict as it stands recorded. You find the defendant
14 Russell Bufalino guilty on Count 1 and Count 2 guilty. As
15 to defendant Michael Sparber guilty on Count 1 and guilty
16 on Count 2. As to defendant Herbert Jacobs guilty on Count 1
17 and guilty on Count 2 and so say you all.

18 THE COURT: I assume, gentlemen, you would like
19 me to have the jury polled?

20 MR. WALLACH: Yes.

21 THE CLERK: You have heard your verdict as
22 it now stands recorded.

23 (Each juror, upon being asked "Is that your
24 verdict," answered in the affirmative.)

25 THE COURT: Ladies and gentlemen of the jury,

AFFIDAVIT OF PERSONAL SERVICE

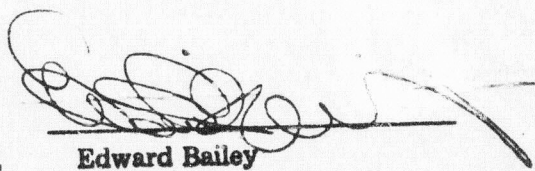
STATE OF NEW YORK
COUNTY OF RICHMOND ss.:

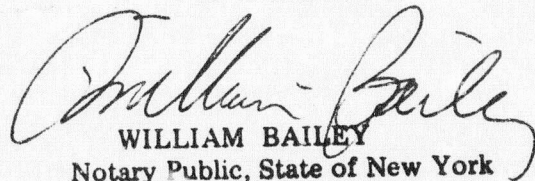
EDWARD BAILEY being duly sworn, deposes and says, that deponent is not a party to the action, is over 18 years of age and resides at 286 Richmond Avenue, Staten Island, N.Y. 10302. That on the 19 day of Dec. ,19 77 at No. 1 St. Andrews Pl., NYC

deponent served the within *appendix*
upon U.S. Attorney, So. Dist. of NY

the Appellee herein, by delivering true copy(ies) thereof to him personally. Deponent knew the person so served to be the person mentioned and described in said papers as the Appellee therein.

Sworn to before me this
19 day of Dec. 1977


Edward Bailey


WILLIAM BAILEY
Notary Public, State of New York
No. 43-0132945
Qualified in Richmond County
Commission Expires March 30, 1978